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# 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.

## 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.

## 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.

# Chapter 2 - Guidelines for Determining Eligibility for Court-Appointed Counsel

## Statutory Provisions on The Right to Counsel

Statutory procedures on the right to representation by a lawyer and appointment of counsel for indigents are found in Va. Code §§ 16.1-266, 16.1-267, 16.1-268 and Va. Code §§ 19.2-157, 19.2-158, 19.2-159, 19.2-160, 19.2-161, 19.2-162 and 19.2-163. A person appearing in court has the right to legal representation and may obtain his/her own counsel. The accused may also waive his/her right to legal representation. The right to be represented by a court-appointed attorney is restricted by law to individuals who are indigent and charged with an offense punishable by incarceration, or adults who may be subjected to loss of parental rights by court order. An indigent is defined as a person who requests legal counsel but is unable to provide for full payment of a lawyer's fee without causing undue financial hardship to himself or his family.

The court is not required to appoint counsel in instances where the accused is charged with a non-jailable misdemeanor or, if charged with a jailable misdemeanor, where the judge has declared in writing prior to trial that any sentence upon conviction will not include imprisonment.

The appointment of counsel in cases involving children is handled differently according to the type of case. In abuse, neglect, termination of parental rights cases, and entrustment agreement proceedings, a lawyer who serves as a guardian ad litem must be appointed pursuant to Va. Code § 16.1-266. The parents of the child, adoptive parents, or other parties with a legitimate interest who have filed a petition with the court are liable to pay the costs of such representation under Va. Code § 16.1-267 and under the Appropriations Act, Acts of Assembly, if they are determined to be financially able to do so.

In cases involving children alleged to be in need of services, in need of supervision or delinquent, an attorney is appointed if the court determines that the child is indigent and his or her parent/guardian does not retain counsel on the child's behalf. In practice, children are found to be indigent almost without exception when considering their financial resources apart from those of their parents or guardian. If the parents of the child, adoptive parents, or other parties with a legitimate interest are found to be financially able to retain counsel and refuse to do so, then they may be ordered by the court to pay the costs for such representation. In custody cases where each parent or person is represented by counsel, the court does not appoint an attorney for the child except in instances in which the judge finds that the interests of the child are not being adequately represented.

## General Policies

In order to aid case processing and provide counsel to eligible defendants at an early stage in the proceedings, the following procedures should be considered:

- The judge of each appointing court should designate an office and/or individuals to be responsible for interviewing and assisting the defendant in filling out the financial statement forms.
- Judges of the district courts should make the eligibility determination and appointment of counsel in all cases arising in those courts. Judges of the circuit court should rely on the decision of the judge of the district court regarding those cases and only open the issue of eligibility if new information comes to the court's attention or upon request of any party.
- Form DC-333, Financial Statement-Eligibility Determination for Indigent Defense Services is included in this manual and has been reviewed and approved by the Committee on District Courts for use in all district courts. It is also recommended for use in circuit courts.
- All persons requesting counsel should be reminded of the penalties for giving false information in the eligibility process. Va. Code § 19.2-161.
- Defendants should be reminded that, if convicted, costs for their legal representation will be assessed against them at the conclusion of the trial and added to their fines, costs, and expenses owed.
- The person requesting court-appointed counsel should provide to the court an estimation of their total assets, to be recorded onto the financial statement form. The court may but is not required to verify the estimations given.

## Procedures for Determining Eligibility of an Adult for Court-Appointed Counsel

The determination of the right to court-appointed counsel is made prior to the trial if no determination was made in a pre-trial procedure. The procedures for determining the right of the person to a court-appointed lawyer are outlined below:

- Every person accused of having committed a crime or who may be subjected to loss of parental rights must be advised of his/her right to legal representation:
    - The individual may elect to hire their own attorney;
    - The individual may waive their right to legal representation;
    - The judge will appoint a lawyer to represent the accused at public expense if the person indicates he is indigent and that it is his desire to obtain a court-appointed attorney by filing a request for counsel form together with a financial statement, and the person indicates that he is indigent and meets the eligibility requirements established by law.

- The court is not required to appoint counsel in instances where the accused is charged with a misdemeanor if the judge has stipulated in writing prior to trial that, if convicted, no jail sentence will be imposed.
- The person should be advised that if the court appoints a lawyer, the accused is liable for the full costs allowed by the court for such counsel if convicted.
- The person should be asked to indicate his/her choice regarding representation by a lawyer:
    - If the accused indicates he/she will hire an attorney, instruct him/her to have the attorney notify the clerk's office that the lawyer will be representing the accused.
    - If the accused wishes to waive their right to counsel, have him/her sign form DC-335, Trial Without a Lawyer (in district courts) and follow the appropriate waiver process in circuit courts.

      **NOTE:** If the accused executes a waiver prior to an appearance before a judge, the judge must ask the accused at the trial if he/she still wishes to waive his right to legal representation. This act is required to comply with Va. Code § 19.2-160.
    - The judge may decide not to appoint an attorney prior to trial on a misdemeanor charge if the judge decides that no jail sentence will be imposed upon the accused if convicted. That decision should be stipulated in writing by the judge (in district courts, the judge uses the appropriate section of form DC-335, Trial Without a Lawyer).
    - If the accused asks for a court-appointed lawyer, it must be determined whether he/she is eligible given the charge(s) pending against them. In order to be eligible for representation by a court-appointed lawyer, the accused must be:
        - charged with a felony or a misdemeanor for which a jail sentence may be imposed and be without counsel.
        - one who has not waived his/her right to legal representation, and be one who claims indigency.
- The accused must prepare and sign form DC-334, Request for Appointment of a Lawyer requesting representation by a lawyer as well as form DC-333, Financial Statement - Eligibility Determination for Indigent Defense Services. These forms may be used as well in circuit courts.
- Once completed, the forms must be transmitted to the court according to the instructions of the judge.

## Use of the Financial Eligibility Guidelines

The financial eligibility guidelines established by the General Assembly for use by all courts are as follows:

## Presumption of Indigency

A defendant is presumed eligible for appointed counsel if the defendant is a current recipient of a state or federally administered public assistance program for the indigent. Examples are AFDC, Food Stamps, Medicaid, and Supplemental Security Income (SSI). This presumption shall be rebuttable where the court finds that a more thorough examination of financial resources of the defendant is necessary.

## Financial Resources

If the defendant requests court-appointed counsel and is not presumptively eligible under paragraph 1, the court shall examine the financial resources of the defendant with consideration given to net income, assets, and exceptional expenses.

## Net Income

The defendant's net income shall include total salary and/or wages minus deductions required by law. Also, to be considered are funds and amenities from any other sources including but not limited to:

- social security payments
- union funds
- veteran's benefits
- workmen's compensation
- unemployment benefits
- other regular support from an absent family member
- public or private employer pensions
- income from dividends, interest, rents, estates, trusts, or gifts.

## Assets

The court shall examine all assets convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the applicant's ability to maintain home/employment. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the defendant that is readily convertible into cash shall be considered, except property exempt from attachment. All real estate owned by the defendant shall be considered in terms of the amount that can be raised by a loan on the property.

## Exceptional Expenses

In making its determination, the court shall consider, in addition to income and assets, any unusual expenses of the defendant and/or his/her family, which would in all probability prohibit him/her from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and childcare payments.

## Indigency Formula

If the available funds (sum obtained from paragraph 2 A and B minus the expenses included in paragraph 2 C) are at or below the amounts in the following table and the defendant does not waive his right to counsel or retain counsel on his own behalf, the defendant is deemed eligible for defense services at public expense.

**Household Size:** includes total number of persons residing in the home that the defendant has financial responsibility for, including the defendant.

| Household Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| 2026 Average Funds (annually) | 19,950 | 27,050 | 34,150 | 41,250 | 48,350 | 55,450 | 62,550 | 69,650 |

Source: Federal Poverty Guidelines plus 25% (Source: Federal Register/Vol. 91/ January 15, 2026 pp. 1797-1798)

**(Add $7,100 for each additional member in households of more than eight)**

For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the defendant's household, shall be considered unless the spouse was the victim of the offense(s) allegedly committed by the accused.

**NOTE:** The Office of the Executive Secretary of the Supreme Court of Virginia will distribute updates to these income levels to all courts on an annual basis.

### Exceptional Circumstances

If the available funds of the accused exceed recommended guidelines and the defendant fails to employ counsel and does not waive his right to counsel, the Court may, in exceptional circumstances and where the ends of justice so require, appoint an attorney to represent the defendant. In making such appointments, the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the permanent record of the case. In district court cases, the written statement should be made in the order portion of form DC-334, Request for Appointment of a Lawyer.

## Procedures for Determining Eligibility of a Juvenile for Court Appointed Counsel

If a juvenile is eligible for court-appointed counsel under the provisions of Va. Code § 16.1-266, the same financial eligibility guidelines are applied in determining whether counsel should be appointed. The financial and legal responsibility of parents or persons standing in loco parentis is provided in Va. Code §§ 16.1-266 and 16.1-267. Parents or guardians must complete a financial statement if a court-appointed lawyer for the juvenile is requested. Parents are liable for the costs of such counsel up to $330 when a lawyer is appointed in the J&DR court and the parents are deemed financially able to pay. However, Va. Code § 16.1-267 limits the liability of a parent to a maximum of $100 if the action involving a juvenile is in a circuit court. In addition, counsel appointed by the court under Va. Code § 16.1-343 for involuntary commitment, or an appeal, shall be compensated in the amount not to exceed $100.

## DC-333, FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES

**FINANCIAL STATEMENT – ELIGIBILITY DETERMINATION** Case No. .....
**FOR INDIGENT DEFENSE SERVICES** Commonwealth of Virginia VA. CODE § 19.2-159
**PRESUMPTIVE ELIGIBILITY**

[ ] I currently receive the following type(s) of public assistance in ..... CITY/COUNTY
[ ] TANF $ ..... [ ] Medicaid [ ] Supplemental Security Income $ .....
[ ] SNAP (food stamps) $ ..... [ ] Other (specify type and amount) .....
[ ] I currently do not receive public assistance.
Names and address of employer(s) for defendant and spouse:

Self .....

Spouse (not applicable if alleged victim) .....

| **NET INCOME:** | **Self** | **Spouse** |
|---|---|---|
| Pay period (weekly, every second week, twice monthly, monthly) | | |
| Net take home pay (salary/wages, minus deductions required by law) | $ | |
| Other income sources (please specify) | | |
| ..... | | $ |

**EMPLOYMENT HISTORY:**
Were you employed at the time of your arrest? [ ] yes [ ] no
If yes, my net take home pay was [ ] per week [ ] month $ .....
If no, length of time since last employed? .....
Total wages earned last calendar year? $ .....

| | | | | | |
|---|---|---|---|---|---|
| | | | | COURT USE ONLY | |
| **TOTAL INCOME** | $ ..... | + ..... | = | | **A** |

| **ASSETS:** | | | |
|---|---|---|---|
| Cash on hand ..... | $ ..... | ..... | |
| Bank Accounts at: ..... | $ ..... | ..... | |
| Any other assets: (please specify) | | | |
| _____ with a value of ..... | $ ..... | ..... | |
| Real estate – $ _____ NET VALUE | $ ..... | ..... | |
| Motor Vehicles: _____ YEAR AND MAKE with net value of ..... | $ ..... | ..... | |
| Motor Vehicles: _____ YEAR AND MAKE with net value of ..... | $ ..... | ..... | |
| Other Personal Property: (describe) ..... | $ ..... | ..... | |

| | | | | | |
|---|---|---|---|---|---|
| | | | | COURT USE ONLY | |
| **TOTAL ASSETS** | $ ..... | + ..... | = | | **B** |

..... Number in household defendant has financial responsibility for, including defendant.

**EXCEPTIONAL EXPENSES** (Total Exceptional Expenses of Family)
Medical Expenses (list only unusual and continuing expenses) ..... $ .....
Court-ordered support payments/alimony ..... $ .....
[ ] deducted from paycheck [ ] not deducted from paycheck
Child-care payments (e.g. day care) ..... $ .....
Other (describe): .....
..... $ .....

**This statement is made under oath. Any false statement may constitute a violation of law under Virginia Code § 19.2-161 and be subject to criminal penalty, including incarceration.**

| | | | | | |
|---|---|---|---|---|---|
| | | | | COURT USE ONLY | |
| **TOTAL EXPENSES** | $ ..... | | = | | **C** |
| COLUMN "A" plus COLUMN "B" minus COLUMN "C" equals available funds | | | = | | |

I hereby state that the above information is correct to the best of my knowledge.

Name of defendant (type or print) .....

..... _____
DATE SIGNATURE

Sworn/affirmed and signed before me this day.

..... _____ _____
DATE SIGNATURE TITLE

FORM DC-333 REVISED 10/11

## Eligibility Determination

Pursuant to Va. Code § 19.2-159, the criteria is established for determination of indigency and eligibility for appointment of court-appointed counsel or public defender services in all Virginia courts.

## Presumption of Indigency

A defendant is presumed eligible for appointed counsel if the defendant is a current recipient of a state or federally administered public assistance program for the indigent. Examples are AFDC, Food Stamps, Medicaid, and Supplemental Security Income (SSI). This presumption shall be rebuttable where the court finds that a more thorough examination of financial resources of the defendant is necessary.

## Financial Resources

If the defendant requests court-appointed counsel and is not presumptively eligible, the court shall examine the financial resources of the defendant with consideration given to Net Income, Assets, and Exceptional Expenses.

### Net Income

The defendant's net income shall include total salary and/or wages minus deductions required by law. Also to be considered are funds and amenities from any other sources including but not limited to social security payments, union funds, veteran's benefits, workmen's compensation, unemployment benefits, other regular support from an absent family member, public or private employee pensions, or income from dividends, interests, rents, estates or trusts, or gifts.

### Assets

The court shall examine all assets convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing defendant's ability to maintain home/employment. Assets include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the defendant that is readily convertible into cash shall be considered, except property exempt from attachment. All real estate owned by the defendant shall be considered in terms of the amounts that could be raised by a loan on the property.

### Exceptional Expenses

In making its determination, the court shall consider, in addition to income and assets, any unusual expenses of the defendant and/or his/her family that would, in all probability, prohibit him/her from being able to secure private counsel. (Such items shall include but not be limited to costs for medical care, family support obligations, and childcare payments.)

## Indigency Formula

If the available funds (sum of total income and assets less the exceptional expenses) are at or below the amounts in the following table and the defendant does not waive his right to counsel or retain counsel on his own behalf the defendant is deemed eligible for defense services at public expense.

**Household Size:** includes total number of persons residing in the home that the defendant has financial responsibility for including the defendant.

| Household Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| 2026 Average Funds (annually) | 19,950 | 27,050 | 34,150 | 41,250 | 48,350 | 55,450 | 62,550 | 69,650 |

Source: Federal Poverty Guidelines plus 25% (Source: Federal Register/Vol. 91, /January 15, 2026/ pp. 1797-1798)

**(Add $7,100 for each additional member in households of more than eight.)**

For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the defendant's household, shall be considered unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

## Exceptional Circumstances

If the available funds of the accused exceed recommended guidelines and the defendant fails to employ counsel and does not waive his right to counsel, the Court may, in exceptional circumstances and where the ends of justice so require, appoint an attorney to represent the defendant; provided however, that in making such appointments, the Court shall state in writing its reasons for so doing. The written statement by the Court shall be included in the permanent record of the case.

**(This page can be duplicated for use in the Courtroom)**

# Chapter 3 - Programs for Handling Advisement/Appointment of Counsel and Indigency Determination Procedure

While the filing of a written financial statement is required, an additional change made in the statutes allows the courts greater flexibility in the handling of right to counsel procedures. Under Va. Code § 19.2-159, in-person examinations of the defendant's financial status by the judge are optional rather than mandatory. The judge reviews the financial statement and makes the decision on eligibility, but this need not take place in open court.

A number of courts have established "pre-trial" procedures for conducting advisements, appointments of counsel, and collection of the needed financial data from the defendant. Such procedures have a number of time saving advantages. First, having the applicant advised of his right to counsel and interviewed for indigency prior to the court hearing reduces bench time for the judge and waiting time for witnesses and victims in other cases. It also reduces the number of appearances in court both for defendants and victims/witnesses. Members of the bar, particularly those serving as court-appointed counsel, favor this approach because it lessens their time in court. Examples of these programs and procedures follow:

## Use of the Magistrate's Office

In a few judicial districts, magistrates assist both the general district and juvenile courts (adult defendants) with right to counsel matters. While the programs operate differently in each area, the steps involved are essentially the same. Under procedures developed by the chief magistrate and the courts, magistrates interview all persons brought to the magistrate for bail hearings and who are charged with offenses for which they may be incarcerated. Typically, magistrates do not include questions relating to the determination of eligibility for court-appointed counsel in those bail hearings where the defendant is intoxicated. Individuals released on summonses by the arresting officer simply appear in court on the specified return date either for advisement or trial.

Magistrates generally collect the information concerning court-appointed attorney eligibility before concluding the bail hearing. After determining bail, magistrates advise defendants of their right to be represented and of the options of employing private counsel, of waiving counsel, or of having the court appoint counsel if the defendant is indigent.

If the defendant waives counsel, the necessary forms are completed and the magistrates set the cases for trial according to prescribed schedules worked out with the appropriate clerk's office.

In some cases subpoenas are issued by the magistrates for both the witnesses of the complainant and the defendant, and all case papers are forwarded to the clerk. On the trial date, the judge reviews with the defendant his decision to proceed without counsel and asks him, if he has not indicated otherwise, to reaffirm the waiver.

If the accused decides to employ counsel, the magistrate sets a date (established by the courts) on which the defendant must appear for an advisement hearing, unless his attorney has notified the clerk's office that counsel has been retained, in which event a trial date may be set. Using such a procedure eliminates the possibility that a defendant who has chosen to retain counsel will appear at trial not having secured counsel, thus requiring a continuance and inconveniencing witnesses, victims, etc.

If a defendant charged with an offense punishable by incarceration requests a court-appointed lawyer, the magistrate uses the financial statement form during the interview with the defendant. Experience has proven it easier for magistrates to obtain the information by oral examination rather than having defendants complete it by themselves. Magistrates explain to the defendant why the information is being asked and conducts the interview in a professional manner.

The chief magistrate and the magistrate regional supervisor should develop written procedures for the magistrate and set a date after implementation to evaluate its success. Suggested steps in developing such a program are as follows:

- The magistrate regional supervisor, chief magistrate, the chief judges and clerks of the district court, and the chief law enforcement officer should hold an initial meeting to discuss the concept. The feasibility of such a project is dependent upon the workload of the magistrates - in high volume magistrate offices the concept might not be practical.
- If, as a result of the initial meeting, all parties agree upon the concept of magistrates collecting data to determine eligibility for court-appointed counsel, the chief magistrate and magistrate regional supervisor must meet with the clerk of each court to be served. The Department of Judicial Services recommends that the procedures for program operation be uniform throughout the magisterial region when more than one locality is involved. Court schedules and methods of forwarding financial statement forms to the court need to be discussed and agreed upon.
- Once the magistrate regional supervisor and chief magistrate have developed written procedures, they will forward them to the judges, clerks, and law enforcement agencies for review and comment.
- The chief magistrate is responsible for providing magistrates with procedural training.
- The courts and magistrates need to evaluate the effectiveness of the program and assess both the positive and negative consequences relating to the program's implementation. The parties should meet within the first six months of the implementation to determine whether to modify or extend the program.

## Use of Probation Counselors in the Court Service Unit

Virginia Code § 16.1-267 specifically provides that staff from the juvenile court services unit may be assigned by the judge to investigate the financial status of parents to determine their ability to pay for an attorney for their child. In a few units, counselors also handle "arraignments" in which the charge(s) against the juvenile is read from a prepared statement, the advisement of counsel is given and the counselors assist the parties in filling out a financial form for submission to the court. Minimum standards adopted by the Department of Juvenile Justice permit counselors to receive workload credit for preparing these and other types of financial reports for the court.

In cases where juveniles are not detained, the summons is issued and a return date, place, and time are specified for the arraignment. This meeting is usually scheduled to take place in the court service unit offices. If the parties request court-appointed counsel and are eligible (given the charges involved), the financial statement is filled out with the probation counselor. If, after approval by the judge, counsel is to be appointed, the probation officer notifies the next attorney on the court-appointed list of the assignment. The case is then set for trial. Thus, the first appearance the juvenile makes before the court is at the trial.

In cases where the juvenile is detained, the judge may designate a counselor to be present at a specified time prior to or immediately following the detention hearing to help parents complete the financial forms. Obviously, the proximity of the detention center must be considered in determining whether or not to follow this practice.

## Use of Court Volunteers

The services of volunteers also are utilized to question defendants on their financial eligibility for court-appointed counsel. Those volunteers have been recruited to work daily at the court to interview bonded and summonsed defendants as well as those held in custody.

Where these programs exist, arraignments are held daily at the beginning of court. All defendants requesting court-appointed counsel are advised by the judge that they must meet with the volunteer who will assist them in completing a financial statement. The bailiff provides the defendants a card specifying the time for the meeting.

Typically, the volunteer uses an office adjacent to the court to conduct the interview. Following the meeting, the individual is instructed when to return to court.

Volunteers should use a secure area of the jail to question a defendant held in custody. After the interviews, the volunteer provides the judge with the returned case files and completed financial statements. The duties of the volunteers in some district courts have been expanded to include interviews of defendants appearing in circuit court by direct indictment.

Court personnel emphasized the need to have either the clerk or a deputy clerk available to train the volunteer and monitor the project's effectiveness. The following suggestions are offered to other jurisdictions interested in establishing similar programs:

- An initial meeting should be held between the clerk and judge(s) to discuss the feasibility of the project for the court.
- If the concept is approved, the clerk or other designated persons should draft guidelines for the program's operation, including how it will be fit into the court's schedule, interview hours, and instructions for volunteers. It is recommended that primary consideration be given to efficiency in the court's calendar and that volunteers be chosen with these time frames in mind. These guidelines should be reviewed and approved by the judges.
- Many courts find it helpful to develop a written job description and "contract" for the volunteer to insure that responsibilities to the court are fully understood.
- Determine potential sources of volunteers. One court worked with a local university to secure interns/volunteers from particular interest areas such as political science, sociology, and law courses. These students receive class credits for participating in such projects. Other potential sources of volunteers are voluntary action centers, retired senior volunteer programs, and local civic organizations.
- Once the volunteer is selected, an implementation date should be set. The clerk may find it helpful to meet with the sheriff, probation counselors, Commonwealth's attorney and jail personnel to acquaint them with the new procedures and/or to distribute written guidelines and procedures to them.
- The volunteer must receive thorough information, training, and instruction regarding the use of forms involved in interviewing defendants. General information about the court's operation and policies also needs to be provided. Special care must be taken to caution the person to avoid responding to questions regarding the need for a lawyer or names of specific attorneys and their qualifications.
- Court personnel responsible for overseeing the program initially should closely monitor the volunteers in the performance of their duties to ensure that guidelines are followed and that objectives of the program are being met.
- It may be helpful to evaluate the program within the first few months of operation. Input should be solicited from the judges, volunteers, court-appointed attorneys and defendants concerning any problems encountered or enhancements that would serve to improve the program.

## Other Options Available to the Court

Other options available to assist courts in handling indigency determination are the use of the Commonwealth's Attorneys offices and the clerks' offices. Under Va. Code § 19.2-159.1 (C), the Commonwealth's Attorney's office may be required by the court to make investigations as to the indigency of an applicant for court-appointed counsel. He/she is also authorized by statute to delegate this responsibility to any state or local agency that possess the facilities necessary to quickly make such investigations. While this continues to be an option for the courts, it appears that few Commonwealth's Attorneys offices currently are able to provide this type of assistance.

District court clerks and deputy court clerks assist in gathering the financial data from persons requesting court-appointed counsel in a number of courts throughout the Commonwealth. To accommodate schedules in the clerks' offices, specific times for the interviews to take place have been established. The notice of right to counsel and financial statement are mailed to or are attached to the summons served on the defendant along with instructions on the date, time and place for individual(s) to be present in the clerk's office. In other courts, the judge has the defendant proceed to the clerk's office immediately following arraignment for help with the form and notification of a trial date.

One final method of collecting the financial data would be for the court to explore using staff from pre-trial release programs and/or personnel from Offender Aid and Restoration programs. While these programs currently are not utilized to provide this type of assistance, their staff and volunteers generally are available in jails and may be especially appropriate to interview those defendants held in custody who have requested court-appointed counsel.

# Chapter 4 - Suggested Procedures for Appointment of Counsel/Maintaining Attorneys Lists

## Introduction

The 2004 General Assembly enacted House Bill 1056 (Chapter 921) that established a Commission to develop criteria for court-appointed lawyers as well as to assume the duties of the existing Public Defender Commission. The General Assembly created this independent oversight commission to provide a unified voice for Virginia's indigent counsel, naming it the Virginia Indigent Defense Commission (VIDC). The VIDC is responsible for providing oversight and support for all attorneys who furnish indigent defense service in the Commonwealth, both public defenders and members of the private bar. The VIDC provides information on indigent defense to the public and reaches out to the courts and Commonwealth's Attorneys as partners in the criminal justice system.

A few of the duties of the Virginia Indigent Defense Commission include the following:

- To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards and to disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.
- To develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.

Beginning July 1, 2005, all attorneys wishing to represent accused persons qualifying for the appointment of counsel through the courts must be certified and included on VIDC's list of qualified attorneys. The Commission's goal is to ensure that every attorney has the time, training, and resources necessary to provide each client with high quality indigent defense services, a necessary component of a fair and reliable criminal justice system. The list will be distributed through the Office of the Executive Secretary and will be available on the court's website (under the "Directories" category):

https://aces.virginiainteractive.org/defend/

Interested persons may also visit the Virginia Indigent Defense Commission (VIDC) website at the following address:

http://www.vadefenders.org

After the decision has been made to appoint counsel, the court must now select an attorney and confirm the appointment. Virginia Code § 19.2-159 states in part: "Except in jurisdictions having a public defender, or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01. If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience."

The court shall provide notice to the Commission of the appointment of the attorney by sending a copy of District Court form DC-334, Request for Appointment of a Lawyer, to the Indigent Defense Commission. There is no statutory requirement as to the frequency of mailing such notices. Therefore, it is recommended that copies be sent to the Commission at least once a month. Copies should be mailed to:

Virginia Indigent Defense Commission
Administration Office
1604 Santa Rosa Road, Suite 200
Henrico, VA 23229
Attn: Attorney Certification Section

In capital cases the Virginia Indigent Defense Commission provides periodically to each clerk's office a current statewide list of attorneys qualified to represent indigent defendants charged with capital murder or sentenced to death. This list should be maintained with your local court appointed counsel list. However, it should not be integrated into that list since it is only used in capital cases.

Form DC-51, ROTATION LIST COURT-APPOINTED ATTORNEY has been designed to assist all courts in complying with Va. Code § 19.2-159. The form's "Date Appointed" column will help document the rotation sequence, and the column headed "Comments" will assist in documenting the reason for refusal of appointment or why the court selected the attorney out of sequence. For example, if the court contacts the next attorney on the list due for

appointment and for some reason there is a conflict, i.e. disqualification, then "disqualification" can be entered in the “Comments” field. If the selected attorney refuses to accept appointment because of a schedule conflict, then "scheduling conflict" may be entered. Examples of other comments that could be entered include "vacation, refused, recidivist appointment, unavailable," or any other appropriate, brief comment.

The date of contact in the foregoing examples should be entered in the “Date Appointed” column of the form and a line drawn through the “Defendant” name column. Through the use of the “Comments” column, the court will be able to document the rotation and the reason for no appointment, if such is the case.

There are several suggested methods the court may use for the selection process:

- **Individual Appointment:** An attorney is selected from a rotating list to represent a single defendant. The next defendant qualifying for appointed counsel receives the next attorney on the list.
- **Multiple Appointments or Time Segment:** The court selects an attorney to take all court appointments during a given time frame, i.e. by day, week, or month.
- **Recidivist Appointment:** The court appoints the same attorney that was appointed originally to represent the defendant on repeated charges. The advantage in this type of appointment is that the attorney is already familiar with the person and his/her background.
- **Selective Appointment:** This method is not used as frequently as others, but in some of the more serious crimes the court may desire to select a more experienced attorney and therefore may bypass the normal rotation sequence.

Regardless of the selection method used by the court, the selection process should be documented and a rotation schedule established. Care should be exercised to assure that all new attorneys who wish to be appointed are added to the list.

The court should maintain a master list with only the names of the attorneys. This will enable the court to photocopy the list for actual use, without having to type a new list each time the list being used has been fully rotated. The list should be maintained until the court's accounts have been audited.

# Chapter 5 - Guidelines for Payment of Court-Appointed Counsel Fees and Expenses

## Introduction

The General Assembly has established certain statutory limitations on payment of fees from the Criminal Fund, which must be followed by the Office of the Executive Secretary of the Supreme Court. All accounts are audited by the Auditor of Public Accounts to ensure that they are in accordance with the Code of Virginia. If a court allows more than the statutory limit, then the Supreme Court is required to return the voucher to the court for correction.

The uniform payment criteria in both circuit and district courts are hours of service. The hourly rate shall not exceed $90 per hour, in or out of court, unless otherwise specified. The total amount allowed for each charge is the sum of the allowable fee and any waiver amount allowed, plus applicable expenses. The fee amount is the total of in-court time and out-of-court time up to the statutory fee amount. The documentation method is on form DC-40, LIST OF ALLOWANCES. Form DC-40, LIST OF ALLOWANCES is to be completed and submitted by the court-appointed attorney within 30 days of the completion of all proceedings in that court- the attorney's in-court time and out-of-court time should be clearly indicated on the form. Form DC-40, LIST OF ALLOWANCES has been designed for use in both district and circuit courts. When a case is placed in the fugitive file the defense of a case may be considered conducted through its conclusion and an appointed counsel entitled to compensation for services, if the accused remains a fugitive from justice one year following the issuance of the capias or summons to show cause, and the attorney has appeared at a hearing on behalf of the accused. Va. Code § 19.2-163

While the court generally cannot exceed the statutory fee allowed for a specific type of charge, Va. Code § 19.2-163 provides for a supplemental waiver amount and for an additional waiver amount above the statutory fee to be awarded by the court in which the case is concluded. In these cases, Va. Code § 19.2-163 requires court-appointed counsel to provide a detailed accounting of time expended for each representation.

Court-appointed attorneys who are not public defenders may request a waiver of these limitations on compensation up to a certain specified additional amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Examples of factors to be considered for Fee Cap Waivers include, but are not limited to, the following:

- Single charge representation (especially misdemeanor and juvenile cases)
- Juvenile charged with an offense that would be a felony if committed by an adult
- Jury trials, including misdemeanors

- Extensive travel required during representation
- Juvenile certification/transfer hearings – J&DR court jurisdiction retained
- Issues requiring extensive legal research
- Matters involving DNA and other scientific evidence
- Multiple defendant, victim, or "spree" cases
- Complex fraud cases
- Representation of a client requiring the services of an interpreter
- Representation of a client with serious mental health issues, or accessibility challenges
- Insanity defense
- Complex investigation, considering number and accessibility of witnesses interviewed, record collection, document organization and use of investigative, expert or other services
- Serving as advisory counsel to pro-se defendant during felony trial
- Matters involving unusually long and complex pretrial hearings, trial, or sentencing hearing
- Change of venue cases

Upon submission by counsel of a detailed accounting of time expended for court-appointed representation and an application outlining the justification for the waiver, the court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation on the statutory fee and authorize additional compensation up to the supplemental statutory waiver amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Counsel may also request additional compensation exceeding these amounts by submitting a written request with a detailed accounting of the time spent and justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether this request for additional compensation above the supplemental statutory waiver amount is justified, in whole or part, by considering the effort expended and time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval.

If both the presiding judge and the chief judge determine that an additional amount is justified based upon the novelty, difficulty, effort expended and time required for the particular representation and they approve a fee for such an additional waiver amount greater than:

- $2,000 in any district court,
- $3,000 in any circuit court misdemeanor or circuit delinquency charge,
- $5,000 in any circuit court felony, Class III to VI charge, or

- $15,000 in any circuit court felony Class II charge,

then such request for an additional waiver amount in excess of the foregoing amounts shall be submitted by the Chief Judge to the Office of the Executive Secretary, with the DC-40A and all supporting documentation, and upon review by the Chief Justice of the Supreme Court, may be paid in full, or, in lieu of full payment, be approved for a partial payment. Partial payments shall be made only in the event the Chief Justice finds such partial payment is necessary to promote the equitable distribution of waiver funds through the end of the fiscal year.

These guidelines are in addition to guidelines posted at http://www.vacourts.gov/forms/district/statutory_criteria_fee_cap_waiver_guidelines.pdf

The payment approval process,[1] including review and approval of invoices by the Office of the Executive Secretary, is a function of the Supreme Court of Virginia's oversight of the judiciary's budget and management of funds, including the Criminal Fund. Fee waivers are paid from a finite appropriation allocated to the fiscal year. The foregoing process is necessary to facilitate the fair distribution of funds as provided for in the Code of Virginia and the Budget.[2]

There is no appeal process available if an application for waiver of fee caps is denied. Additionally, if at any time the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved or paid.

If court-appointed counsel is not requesting a supplemental waiver amount, then only form DC-40, LIST OF ALLOWANCES needs to be completed and submitted to the court by the Attorney. If court-appointed counsel is requesting a supplemental fee waiver, then counsel must complete and submit to the presiding judge for approval, in addition to form DC-40, List of Allowances, form DC-40(A), APPLICATION FOR AND APPROVAL/DENIAL FOR WAIVER OF FEE CAP and an Attorney Time Sheet form. Court-appointed counsel must complete a separate application for each charge for which counsel is requesting a waiver of the fee cap. This form, along with the Attorney Time Sheet shall be retained in the court file. Requests for additional amounts above the statutory fee waiver mirror the form requirements for a supplemental fee waiver but would require approval by both the presiding judge and by the chief judge of the circuit court or the district court in which the case was concluded. Depending on the amount of additional waiver amount being sought, review by the Chief Justice of the Supreme Court may be required.

In the event a waiver of compensation has been requested and authorized, and the defendant is convicted, the court shall assess against the defendant as court-appointed attorney costs only an amount equal to the pre-waiver cap. If the judge or clerk is in doubt as to the statutory limit, he/she should consult the Chart of Allowances or call the Office of the Executive Secretary of the Supreme Court.

[1] See Virginia Code § 2.2-810.
[2] See Item 34 of 2016-18 Biennial Budget.

## Statutory Compensation for Court-Appointed Attorneys

The following chart reflects current statutory compensation for court-appointed attorneys:

| Court | Charge* | Statutory Fee | Supplemental Statutory Waiver Amount | Fee by Additional Waiver |
|---|---|---|---|---|
| District | Misdemeanor (except for statutes in below box) | $330 | Up to $120 | Discretion of Court |
| District | Misdemeanor under §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Up to $120 | Discretion of Court |
| District | Probation Violation | $180 | Up to $120 | Discretion of Court |
| Juvenile and Domestic Relations District | Delinquency | $680 | Up to $120 OR Up to $650 if Equivalent to Class 2 Felony | Discretion of Court |
| Juvenile and Domestic Relations District | Probation Violation for Delinquency | $180 | Up to $120 OR Up to $650 if Equivalent to Class 2 Felony | Discretion of Court |
| District | (If resolved in District Court) Felony, Class 3 to 6 (except for statutes in below box) | $834 | Up to $155 | Discretion of Court |
| District | (If resolved in District Court) Felony, Class 2, OR Felony Violation of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1, or 18.2-371.1 | $1,692 | Up to $850 | Discretion of Court |
| Circuit | Felony, Class 3 to 6 (except for statues in below box) | $834 | Up to $155 | Discretion of Court |
| Circuit | (If resolved in District Court) Felony, Class 2, OR Felony Violation of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1, or 18.2-371.1 | $1,692 | Up to $850 | Discretion of Court |
| Circuit | Probation Violation for Felony (except if Probation Violation for Class 1 Felony | $445 | Up to $155 OR up to $850 if Probation Violation for Class 2 Felony or for Felony Violation of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370,18.2-370.1, or 18.2-371.1 | Discretion of Court |
| Circuit | Misdemeanor (except for statutes in below box) | $330 | Not Available | Not Available |
| Circuit | Misdemeanor under §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Not Available | Not Available |
| Circuit | Probation Violation for Misdemeanor Punishable by Jail | $180 | Not Available | Not Available |
| Circuit | Juvenile Adjudication on Appeal | $680 | Not Available | Not Available |
| Circuit | Probation Violation for Appealed Juvenile Adjudication | $180 | Not Available | Not Available |
| *Defense of an unclassified felony punishable by 20 years or less is compensated as a Felony Class 3 or 4 felony; by more than 20 years as a Class 2 Felony. | | | | |
| Fee for additional waiver is in the discretion of the court. | | | | |
| Fee waivers may only be awarded by the court in which the case is concluded. | | | | |

The General Assembly has authorized the above schedule for compensation for an attorney appointed by the court in a case other than a Class 1 Felony. If co-counsel (more than one attorney) is appointed to represent a defendant at the same time in a case other than a Class 1 Felony or mandatory life offense, then co-counsel shall share the statutory fee, supplemental statutory waiver amount, and fee for additional waiver permitted for one attorney. In the circuit court, court-appointed counsel who is granted leave of court to withdraw and who terminates the representation prior to conclusion of the case, is eligible for the statutory fee and the supplemental statutory waiver amount but is ineligible for a fee for additional waiver.

Additional guidelines are posted at:

http://www.vacourts.gov/courtadmin/aoc/fiscal/home.html#coa
http://www.vacourts.gov/forms/district/statutory_criteria_fee_cap_waiver_guidelines.pdf

In order to comply with Internal Revenue Service requirements and the state's policy regarding payments for court-appointed counsel, the Office of the Executive Secretary of the Supreme Court of Virginia must have a Commonwealth of Virginia Substitute W-9 Form on file before payment to attorneys can be processed. The name and tax identification number shown on the Commonwealth of Virginia Substitute W-9 Form must match Internal Revenue Service records. Examples of proper IRS Form W-9 information are as follows:

- ☐ An attorney working for a firm, who ultimately turns over to the firm his/her court-appointed fee, must use the firm's name and tax identification number. He/she cannot use his/ her name and the firms' tax identification number.
- ☐ An attorney working for a firm, but who, on occasion, works for himself/ herself and receives renumeration direct, should be paid using his/her name and Social Security number.
- ☐ An attorney working as an individual or sole proprietor must use his/her Social Security number or he/she can use an employer tax identification number.
- ☐ An attorney working for a sole proprietor must use the sole proprietor's Social Security number or the employer’s tax identification number and the sole proprietor's name.

The name and tax identification number in which a check is issued is how the income will be reported to the Internal Revenue Service at the end of the tax year. This must be the name and number on file with the federal government. All courts have been notified to issue payment requests as required to meet Internal Revenue Service regulations.

NOTE: Clerks should make every attempt possible to ensure that attorneys have complied with the Internal Revenue Service Regulations regarding the filing of an IRS Form W-9. If assistance regarding this process is needed, please contact:

Supreme Court of Virginia
Office of the Executive Secretary
Accounts Payable Administrator
100 North Ninth St., 3rd Floor
Richmond, Virginia 23219

Expedited Reimbursement: In an effort to expedite the speed and efficiency of the court-appointed counsel reimbursement process of approved court-appointed counsel compensation and to reduce the associated expense involved in processing manual payments, a direct deposit service is available to all court appointed counsel (all vendors, including court reporters, interpreters, etc. are eligible) who register through the Virginia Electronic Data Interchange. You may sign up for this service at the following website:

https://www.doa.virginia.gov/forms.shtml#edi

Upon accessing this site, go to the "Trading Partner Information" subtitle and click on "Trading Partner EDI Agreement and Enrollment Form for Vendors." You will be routed to a PDF form for you to complete and mail. Once registered, you will receive e-mail notices indicating the date and amount of deposit that is being made to your designated bank account, along with a trace number for you to track this transaction.

The provisions of Va. Code § 2.2-810 provide that the comptroller shall not pay any allowance made by any court of the Commonwealth until the Supreme Court of Virginia has approved such allowance for payment. Pursuant to this section, the Supreme Court has established the policy that the court will not approve any allowance for court appointed attorney fees that exceed $90 per hour for in-court or out of court service. Such allowances are subject to any statutory maximum applicable. However, in aggravated murder cases, the court may allow an amount deemed reasonable.

Counsel representing a defendant charged with a Class 1 felony (aggravated murder) may submit to the court on a monthly basis, a statement of all costs incurred and fees charged by him in the case during that month. Whenever the total charges are deemed reasonable by the court for which payment has not previously been made or requested exceed $1,000, the court may direct that payment be made. Completed District Court Form DC-334 (Request for Appointment of a Lawyer) indicating "Aggravated Murder" or Circuit Court Order must be attached when submitting voucher for reimbursement. *The Supreme Court of Virginia has established separate hourly rates for aggravated murder of up to $150 per hour in court and $120 per hour out of court.

Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding.

Clerks of Court, Court-Appointed Counsel and Public Defenders should review the appendix on "Forms" regarding procedures for completion of form DC-40, LIST OF ALLOWANCES for reimbursement compensation.

**NOTE:** Court-appointed attorneys should be encouraged by court management to submit form DC-40, LIST OF ALLOWANCES immediately upon conclusion of their client's trial. This would facilitate the timely processing of payment to the attorneys by the court and will also enable the court to assess court-appointed attorney costs upon the conclusion of the trial to the accused if such costs are assessable.

The statutory limit to defend an unclassified felony charge in a circuit court that is punishable by 20 years confinement or less is compensated as a Class 3 or 4 felony. If a supplemental statutory waiver amount is approved for this example, the statutory limit to defend such a felony charge in a circuit court is an additional sum not to exceed $155. A felony punishable by more than 20 years confinement in the state correctional facility is compensated as a Class 2 felony, a sum not to exceed $1,692. If a supplemental statutory waiver amount is approved for this example, the statutory limit to defend such a felony charge in a circuit court is an additional sum not to exceed $850. Should an additional fee waiver be granted by the circuit court for the above example, it is at the court's discretion to determine the additional amount of compensation.

The statutory limit to defend any misdemeanor charge, except for §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24, in district court or circuit court that is punishable by confinement in jail is a sum not to exceed $330. At the district level an additional compensation of up to $120 may be authorized if a supplemental statutory waiver amount is approved. No additional supplemental statutory waiver compensation is allowed at the circuit level.

For misdemeanors under §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24, compensation for the court-appointed attorney shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $448.00 in either district courts or circuit courts. At the district level an additional compensation of up to $120 may be authorized if a supplemental statutory waiver amount is approved. No additional supplemental statutory waiver compensation is allowed at the circuit level.

For misdemeanor probation violations, a court-appointed attorney shall be compensated at a rate not to exceed a cap of $180 in both district and in circuit court. No additional supplemental statutory waiver compensation is allowed. An additional compensation of up to $120 may be authorized if a supplemental statutory waiver amount is approved in district court; however, no additional supplemental statutory waiver compensation is allowed at the circuit court level.

In the Juvenile and Domestic Relations District court, compensation for the court-appointed attorney for a delinquency charge shall be compensated at a rate not to exceed a cap of $680. An additional compensation of up to $120 or up to $650 if the charge is equivalent to a Class 2 Felony may be authorized if a supplemental statutory waiver amount is approved.

For delinquency probation violation for a juvenile, compensation for the Court-appointed attorney shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $180.00 in the Juvenile and Domestic Relations District Courts. An additional compensation of up to $120 or up to $650 if the charge is equivalent to a Class 2 Felony may be authorized if a supplemental statutory waiver amount is approved.

Counsel appointed by circuit court to represent parolees in any proceeding before a hearing officer in Va. Code § 53.1-165 (C) shall be paid according to the hourly rate guideline of $90 per hour for in-court or out-of-court service.

Counsel appointed by circuit court to assist indigent prisoners confined in a state correctional facility regarding any legal matter relating to their incarceration may be paid up to $55 per hour with a maximum per diem compensation of $200. Va. Code § 53.1-40. Va. Code § 19.2-163 provides that in the event counsel is appointed to defend an indigent defendant charged with any felony that is punishable as a Class 1 felony, each attorney appointed shall continue to receive compensation as provided in Va. Code § 19.2-163 paragraph 4 for defending such a felony, regardless of whether the charge is reduced or amended to a lesser felony, prior to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in Va. Code § 19.2-163 paragraph 4 for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

Court-appointed attorneys appointed to represent adults charged with a felony for the preliminary hearing in either the Juvenile and Domestic Relations or the General District Court are eligible for compensation up to the appropriate felony rate for the preliminary hearing in the district court that results in a final disposition (i.e.: reduced to misdemeanor, dismissed, nolle prosequi etc.). If the felony is unclassified, must be indicated on the DC-40, List of Allowance.

For a Class 3 to 6 felony except for felony violations of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1, the compensation for the Court-appointed attorney shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $834 in either district court or circuit court. Additional compensation of up to $155 may be authorized if a supplemental statutory waiver amount is approved at either the district or circuit court level.

For a Class 2 felony or a felony violation of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1, the compensation for the Court-appointed attorney shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $1,692 in either district court or circuit court. Additional compensation of up to $850 may be authorized if a supplemental statutory waiver amount is approved at either the district or circuit court level.

For preliminary hearings in the district court that are certified to the circuit court, the court-appointed attorney is only eligible for compensation up to the district court maximum of $330 which is the fee cap for a misdemeanor that is not charged under Va. Code §§ 18.2-266, 18.2-266.1, 18.2-270, or 14.2-341.24. No additional supplemental statutory waiver compensation is allowed in such instances since the case was certified and did not reach final disposition at the district court.

When a felony offense is certified by district court to circuit court, "the court shall also certify any ancillary misdemeanor offense to the clerk of the circuit court provided that the Commonwealth and the accused consent to such certification." Va. Code § 19.2-190.1. Representation by court-appointed counsel with regard to an ancillary misdemeanor certified to the circuit court along with a felony is eligible for compensation up to the normal district court maximum of $330, for each certified misdemeanor. However, that portion of the representation for the ancillary misdemeanor does not involve the final disposition at the district court and therefore, that representation of the ancillary misdemeanor is not eligible for further compensation under the waiver provisions of Va. Code § 19.2-163.

Court appointed attorneys representing juveniles charged with a delinquent act which would be a felony if committed by an adult are eligible for compensation up to the maximum rate of $680 allowed for district court cases. An additional compensation of up to $120 or up to $650 if equivalent to Class 2 Felony may be authorized if a supplemental statutory waiver amount is approved. Should an additional fee waiver be granted for the above example, it is at the court's discretion to determine the additional amount of compensation.

Court-appointed attorneys representing adults on a felony probation violation are eligible for compensation up to the maximum rate of $445, except if the probation violation is for a Class 1 felony. An additional compensation of up to $155 if a supplemental statutory waiver amount is approved. If the Court-appointed attorney is appointed to represent a Class 2 felony probation violation or a felony violation of §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1, additional compensation of up to $850 may be authorized if a supplemental statutory waiver amount is approved.

Court-appointed attorneys representing a juvenile adjudication on appeal are eligible for compensation up to the maximum rate of $680. No additional supplemental statutory waiver compensation is allowed.

In circuit court, for a probation violation for appealed juvenile adjudication, the court-appointed attorney shall be compensated at the rate not to exceed a cap of $180. No additional supplemental statutory waiver compensation is allowed.

Under Chapter 9.1 of Title 19.2 (Va. Code §§ 19.2-152.7:1 through 19.2-152.12), when representation is required for the respondent in protective order proceedings, Va. Code § 19.2-152.12 allows the Court to appoint either a Court appointed attorney or GAL when required by the Servicemembers Civil Relief Act or a "person under a disability" as defined by Va. Code § 8.01-2 (See Va. Code § 8.01-9). Compensation for the Court appointed attorney or GAL shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $330.00 in district courts and to a cap of $330.00 in circuit courts.

Court management is urged to consult the Supreme Court of Virginia's Chart of Allowances for current information and procedures guiding the payment of court-appointed counsel. The chart presented below summarizes the maximum compensation for court-appointed attorneys for preliminary hearings disposed of in the district court.

## District Court

The following examples of how these allowances may be applied in specific situations are offered to assist court management with the court-appointed attorney process:

Example No. 1
In defending a single charge, court-appointed attorney submits completed form DC-40, List of Allowances detailing four hours of service. Fees would be calculated as follows: 4 x $90 = $360. The judge may allow a maximum of $330 in addition to expenses claimed since the fee total exceeded the statutory maximum if the charge is any misdemeanor except under §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24.

Example No. 2
In defending two misdemeanor charges that are not written pursuant to §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24, the attorney submits form DC-40, List of Allowances for four hours of service. His fees would be calculated as follows: 4 x $90 = $360. The judge may allow the $360 since the fee total did not exceed the maximum allowed by law (2 x $330 = $660). The judge may not allow an amount greater than $360 since the time sheet did not justify a greater award.

Example No. 3
In defending a misdemeanor charge of Va. Code § 18.2-266 against a single defendant, the attorney submits form DC-40, List of Allowances for five hours of service. His fees would be calculated as follows: 5 x $90 = $450. The judge may allow the statutory maximum of $448 (1x $448 = $448).

Example No. 4
In defending an adult defendant charged with a Class 4 felony on the preliminary hearing, which is reduced to a misdemeanor, and the defendant is convicted in the district court, the attorney submits form DC-40, List of Allowances for four hours of service. His fees would be calculated as follows: 4 x $90=$360. The judge may allow the $360, since the fee total did not exceed the maximum allowed by law ($834 for Class 3 through Class 6 felony). The judge may not allow an amount greater than $360 since form DC-40, List of Allowances submitted by the attorney did not justify a greater award. The amount awarded to the attorney ($360) would be assessed as costs to the defendant.

Example No. 5
For defending an adult defendant charged with a Class 4 felony on the preliminary hearing in district court. At the preliminary hearing, probable cause was found, and the case was certified to the circuit court. The attorney submits form DC-40, List of Allowances for four hours of service. His fees would be calculated as follows: 4 x $90=$360. The judge may only allow the statutory maximum of $330 for district courts since the case was certified and did not reach final disposition at the district court.

Example No. 6
In defending an adult defendant charged with a Class 2 felony on the preliminary hearing in district court. At the preliminary hearing, the case was dismissed against the defendant. The attorney submits form DC-40, List of Allowances for nine hours of service. His fees would be calculated as follows: 9 x $90= $810. The judge may allow the total $810 since the fee total did not exceed the maximum allowed by law ($1,692 for Class 2 felony). The judge may not allow an amount greater than $810 since form DC-40, List of Allowances submitted by the attorney did not justify a greater award.

**NOTE:** For appointment of multiple charges, the judge should designate the amount for each charge when approving form DC-40, List of Allowances. This will allow the clerk to assess the proper amount against the defendant for each conviction. If the amount per charge is not designated for appointment of multiple charges, then the clerk should prorate that amount to all the charges by dividing the total amount awarded the court-appointed attorney by the number of charges represented.

For example, in defending two misdemeanor charges, the attorney submits form DC-40, List of Allowances for four hours of service. His fees would be calculated as follows: 4 x $90 = $360. The judge may allow the $360 since the fee total did not exceed the maximum allowed by law (2 x $330 = $660 maximum). The defendant was convicted on one charge and the second charge was dismissed. If the judge designated $120 for the charge convicted and $120 on the dismissed charge, the defendant would only owe the $120 as court-appointed attorney costs. If the judge did not designate the amount for each charge when approving form DC-40, List of Allowances then the clerk would assess $120 per charge ($240 divided by 2 charges) and the defendant would only owe, as court-appointed attorney costs, the $120 amount.

Expenses

On form DC-40, List of Allowances, there is space provided for itemized expenses, which should be supported by receipts, bills, etc. The judge should review these expenses before certifying them to the Supreme Court of Virginia for payment. These expenses are subject to audit and review by the Supreme Court as well as the Auditor of Public Accounts. Examples include the following: the number of miles traveled for mileage; itemized telephone bills for long distance calls; hotel/motel bills. These bills and statements are to be filed with form DC-40, List of Allowances claim to the Supreme Court for payment. Receipts are required for any expenses over $20.00. These provisions for reimbursement of expenses apply to expenses incurred by a public defender as well as other court-appointed counsel.

**NOTE:** For General district and J&DR court cases, all approved court-appointed counsel expenses (mileage, phone calls, etc.) should be assessed as costs against the defendant upon conviction in the same manner as the imposition of authorized court-appointed attorney fees.

In juvenile cases where the parents are ordered to reimburse the court for court-appointed counsel fees, expenses can be included. However, the total counsel fee and expenses cannot exceed the $330.00 maximum for each single charge in the J&DR Court and $100 in the circuit court.

## Circuit Court

The following examples of how these allowances may be applied in specific situations are offered to assist court management with the court-appointed attorney process:

Example No. 1
In defending a single misdemeanor charge, except if the charge is any misdemeanor under §§ 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24, the attorney submits form DC-40, List of Allowances and Attorney Time Sheet detailing four hours of court service. The fee charged would be calculated as follows: 4 x $90 = $360. The judge may allow only $330 since that is the statutory maximum.

Example No. 2
In defending a single Class 2 felony, the court reduced the charge to a Class 4 felony and the defendant was convicted. The court appointed attorney submits form DC-40, List of Allowances for eight hours of service. The fee charged would be calculated as follows: 8 x $90 = $720. The judge may allow $720 since the fee did not exceed the maximum allowed by law ($1,692 for Class 2 felony). The attorney is entitled to compensation based on the statutory maximum allowed for the class of felony the defendant was charged with at the time of appointment, even if the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case. The judge may not allow an amount

greater than $720, since form DC-40, List of Allowances submitted by the attorney did not justify a greater award.

# Chapter 6 - Recovery of Court-Appointed Counsel and Public Defender Costs

## Introduction

The Code of Virginia provides several different methods to recover fines and costs. Some methods are more effective than others, and some methods apply only to specific situations. The following procedures are outlined to assist courts with the process.

- *Judgment:* Virginia Code § 19.2-341 provides that penalties imposed and costs taxed shall constitute a judgment in favor of the Commonwealth and, if not paid at the time of imposition, execution may issue thereon in the same manner as upon any other monetary judgment. Virginia Code §§ 19.2-339 through 19.2-358 describe proceedings to recover fines and costs and the methods for collection. The Commonwealth Attorney is to superintend the issuance of executions in circuit courts, and effective January 1, 1985, in district courts.
- *Payment at Time of Trial:* For Commonwealth cases, when the court-appointed counsel fee is collected at the time of trial, it should be treated as a recovered cost (Revenue Code 120) and form DC-40, List of Allowances should be processed for payment. On local ordinance cases, the court-appointed counsel fee should be collected using the appropriate locality revenue code, and the locality should be invoiced for the court-appointed attorney payment.
- *Deferred or Partial Payment:* The court may allow the defendant to pay the fine and costs on an installment basis or allow the defendant a given time period to defer paying the entire amount in a lump sum by a given date. Va. Code § 19.2-354.
- *Show Cause Summons:* The court may issue form DC-360, Show Cause Summons (Criminal) requiring the defendant to show cause why he should not be imprisoned or fined for non-payment when he has defaulted on an installment or deferred payment plan. Va. Code § 19.2-358.
- *Debt Set-Off:* The court must also report unpaid fines and fees due the Commonwealth on criminal cases through the Debt Set-Off process. This method attaches any refund due the defendant from state income taxes and applies such amount as necessary to satisfy the court's claim. Va. Code §§ 58.1-520 through 58.1-535.
- *Commonwealth Attorney:* The court must report all delinquent fines and cost cases to the Commonwealth Attorney. The Commonwealth Attorney can retain these cases to pursue collection efforts or elect to contract with a private collection agent or attorney, or forward delinquent cases to the Department of Taxation for collection. Va. Code § 19.2-349.

- *Juvenile Cases:* In juvenile cases, the court shall assess the costs in whole or in part against the parents for court-appointed counsel in an amount not to exceed $330 in district court and not to exceed $100 in circuit court, if the court finds the parents are financially able to pay regardless of the adjudication of delinquency or a finding of guilt. Va. Code § 16.1-267. In cases where a guardian ad litem has been appointed to represent a child in accordance with Va. Code § 16.1-266, the court shall require parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, where able, to reimburse the court GAL fees.
- *Community Service:* The court shall establish a program and provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment or in accordance with the provisions of §§ 19.2-316.4, 53.1-59, 53.1-60, 53.1-128, 53.1-129, or 53.1-131 during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs Va. Code § 19.2-354 (C).

## Recovery of Court Public Defender Costs

For courts served by public defenders, the same guidelines for court-appointed counsel apply. The public defender is a salaried employee of the Commonwealth of Virginia. Thus, the court does not process form DC-40, List of Allowances at the conclusion of a trial for payment with the Supreme Court of Virginia. Instead, the public defender is required to submit at the conclusion of trial form DC-52, Public Defender Time Sheet. A copy of this form may, depending on your jurisdiction's requirements, also be used as an invoice to bill the locality for those instances where the public defender represented a defendant charged with a local violation. If a defendant represented by a public defender is convicted of a Commonwealth violation, then the same guidelines for the assessment of costs to the defendant as outlined for court-appointed counsel apply.

When the public defender represents an individual charged with a violation of a county, city or town ordinance, the Commonwealth of Virginia must be reimbursed by the locality for the amount of the court-appointed attorney fee awarded by the court. The Auditor of Public Accounts and the Virginia Indigent Defense Commission have approved the following procedures:

- The court is to bill the city, county, or town whenever services are rendered by the public defender on local violations.
- If the accused has been found guilty or is otherwise assessed the costs of court-appointed counsel, the clerk should assess this cost on the warrant under the appropriate locality recovered costs revenue account (Revenue Code 217 for county recovered court-appointed attorney fees).

- When payment is received from the local treasurer, the court should perform a general miscellaneous receipt for the funds, receipting them to Revenue Code 120 (Commonwealth Recovered Court-Appointed Attorney Fees) and remit the proceeds to the Commonwealth of Virginia in the usual manner.
- Should the defendant subsequently pay owed court-appointed counsel costs, the court should receipt it to the appropriate locality recovered costs revenue account and remit to the locality at the end of the month in the usual manner.

The following examples are offered to illustrate how to account for public defender fees in District Courts:

Example No. 1
The public defender represents a defendant charged with a single Commonwealth violation. The defendant is not convicted. No costs are assessed against the defendant. The public defender completes and submits form DC-52, Public Defender Time Sheet but does not process form DC-40, List of Allowances.

Example No. 2
The public defender represents a defendant charged with a single county violation. The defendant is not convicted. No costs are assessed against the defendant. The Public Defender completes and submits form DC-52, Public Defender Time Sheet. The judge awards the $330 maximum for the public defender's services. The court submits a copy of the DC-52 as an invoice to the locality. The county pays the court $330 and the proceeds from the county are receipted by the court using a general miscellaneous receipt to the Commonwealth recovered cost account (Revenue Code 120).

Example No. 3
The public defender represents a defendant charged with a single county violation. The defendant is convicted. The public defender completes and submits form DC-52, Public Defender Time Sheet. The judge awards the $330 maximum for the public defender's services and that amount is assessed as court-appointed costs against the defendant. The court invoices the county for $330. The county pays the court $330 and the proceeds from the county are receipted via general miscellaneous receipt by the court to the Commonwealth recovered cost account (Revenue Code 120). The defendant subsequently pays the court $120 for the public defender costs owed, which is receipted to the county recovered cost account (Revenue Code 217) and remitted to the county at month-end in the usual fashion.

Example No. 4
The public defender represents a defendant charged with three county violations. The defendant is not convicted. No costs are assessed against the defendant. The public defender completes and submits form DC-52, Public Defender Time Sheet. In defending the three charges, the public defender stipulates to a total of three hours of service. The fee would be calculated as follows: 3 x $90= $270. The judge may allow the $270 since the fee total did not exceed the maximum allowed by law (3 x $330 = $990) for the public defender's services. The court invoices the county for $270. The county pays the court $270, which the court receipts to the Commonwealth recovered cost account (Revenue Code 120) using a general miscellaneous receipt.

Example No. 5
The public defender represents a defendant charged with three Commonwealth violations. The defendant is convicted. The public defender completes and submits form DC-52, Public Defender Time Sheet. In defending the three charges, the public defender stipulates a total of three hours of service. The fee would be calculated as follows: 3 x $90 = $270. The judge may allow the $270 since the fee total did not exceed the maximum allowed by law (3 x $330 = $990) for the public defender's services. The court uses form DC-52, Public Defender Time Sheet to assess $270 in public defender costs against the defendant. The maximum allowable amount assessed against the defendant is $120 per charge. The defendant pays the court $270, which is receipted by the court to the Commonwealth recovered cost account (Revenue Code 120).

Summary
All recovered court-appointed fees should be receipted into the court's accounts under Revenue Code 120 for state appointed public defender fees. The locality should be invoiced (submit an appropriate invoice to the locality, such as a copy of form DC-52, Public Defender Time Sheet) for all instances in which the public defender represented a defendant charged with a local violation. When payment is received from the locality, the court should receipt the proceeds to Revenue Code 120 using a general miscellaneous receipt. Subsequent payments of local court-appointed public defender fees by defendants should be receipted to the appropriate locality revenue code.

# Chapter 7 - Guidelines for Payment of Guardians *Ad Litem* for Children

## Introduction

Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant Va. Code § 16.1-241 (A)(4) or Va. Code § 63.2-1230, the court is required by Va. Code § 16.1-266 to appoint an attorney as guardian ad litem to represent the child. This appointment must be made pursuant to Va. Code § 16.1-266.1.

Payment for attorneys who serve as guardians ad litem for these children will be made in accordance with guidelines established by the Supreme Court. The Supreme Court has approved the policy that guardians ad litem shall be compensated $87.00 per hour for in-court service and $63.00 per hour for out-of-court service. There is no limitation on these payments for hours that are documented and approved by the judge who appointed the guardian ad litem. See Attorney General Opinion to Zehler, dated 10/27/86 (1986-87, page 153) (noting that a guardian ad litem who represents a child in contested custody case is entitled to receive reasonable compensation and actual expenses; if the estate of the child is inadequate to pay such compensation, compensation may be taxed as costs in proceedings). See also Attorney General Opinion to Hertz, dated 12/2/80 (1980-81, page 177) (opining that the fee of a court-appointed guardian ad litem is determined by Va. Code § 8.01-9). Further, the court is authorized to pay for the reasonable expenses of a guardian ad litem incurred in representing a child.

The documentation method for payment as a guardian ad litem is the same as that used for court-appointed counsel (See form DC-40, List of Allowances). However, if the amount of reimbursement exceeds $500, guardians ad litem should submit an itemized statement that details the dates, times and tasks performed for the hours claimed on form DC-40, List of Allowances (e.g., “meeting with client,” interviewing parent,” etc).

The Appropriations Act, Acts of Assembly, requires parents, adoptive parents, or another party with a legitimate interest who has filed a petition to reimburse the Commonwealth for the costs of services rendered by guardians ad litem for their children. “Parties with a legitimate interest” shall be broadly construed and includes, but is not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, provided any such party intervened in the suit or is otherwise properly before the court. This legislative requirement also directs the Executive Secretary of the Supreme Court to report on payments under this program on a semi-annual basis.

## Scope of Legislative Policy

The requirement that the Commonwealth be reimbursed by parents (or by other parties with a legitimate interest so identified by the court) for the costs of the guardian ad litem for children encompasses those appointments of guardians ad litem made pursuant to Va. Code § 16.1-266. These provisions apply to appointments in the juvenile and domestic relations district court and to those appointments made by a circuit court in a case on appeal from the juvenile and domestic relations district court, when the circuit court is invoking the appointment authority of Va. Code § 16.1-266.[3]

In every instance, appointment of a guardian ad litem for a child should be made by the court in accordance with customary legal and judicial practices and without regard to the availability or ability of a parent or parents (or other parties with a legitimate interest) to pay the costs of the guardian ad litem's services.

## Notice to Parent (Or Other Party with A Legitimate Interest)

As a part of the process of appointing a guardian ad litem for a child, the court should inform parents (or the other parties with a legitimate interest) of their obligation under this law to reimburse the Commonwealth for the costs of the guardian ad litem's services. Whenever possible, notification of potential financial responsibility should occur in the context of a hearing where the responsible parties are present, in addition to the written notice referenced below. The notice should include a statement that such reimbursement (i) may not exceed the amount awarded the guardian ad litem by the court and (ii) may be reduced or eliminated if the court determines that the parents are unable to pay.

Two district court forms effectuate this notice requirement. Form DC-510, Summons includes on the reverse side a notice of this obligation of the parents (or the parties with a legitimate interest). Form DC-533, Assessment/Payment Order facilitates the court's assessing the parents (or the parties with a legitimate interest) with the amount determined to be appropriate. This order is included as an attachment to form DC-514, Order for Appointment of Guardian ad litem to remind the court of the need to make this determination and assessment.

## Compensating the Guardian Ad Litem

Requests for payment of a guardian ad litem by the juvenile and domestic relations district court, and by the circuit court in cases appealed from the juvenile court, should be submitted to OES for payment from the Criminal Fund. The appointing court retains its oversight responsibility for reviewing and approving these requests for compensation of guardians ad

[3] When a circuit court appoints a guardian *ad litem* pursuant to the exercise of its equity powers, the circuit court may continue to order the appropriate party or parties to pay the guardian *ad litem* directly. *See* Verrocchio v. Verrocchio, 16 Va. App. 314 (1993).

litem. Prior to approving a request for reimbursement for more than $500, the court should ensure that the GAL has submitted for the court's review an itemized statement which details the dates, times and tasks performed for the hours claimed on form DC-40, List of Allowances (e.g. "meeting with client," interviewing parent," etc.) The court then has the responsibility to seek reimbursement for the costs of the guardian ad litem services from the parents (or from the parties with a legitimate interest). The court should not direct the guardian ad litem to seek reimbursement of his/her fee from the parents (or from the parties with a legitimate interest).

The amount awarded the guardian ad litem by the court should conform to the Supreme Court-approved hourly rate for in-court ($87.00per hour) and out-of-court ($63.00per hour) fees, plus expenses, and should be reviewed by the judge based on current principles governing the submission of form DC-40, List of Allowances. The amount the parents (or the parties with a legitimate interest) are ordered to pay the Commonwealth is limited to the amount approved by the court for payment to the guardian ad litem.

Under Chapter 9.1 of Title 19.2 (Va. Code §§19.2-152.7:1 through 19.2-152.12), when representation is required for the respondent in protective order proceedings, Va. Code§19.2-152.12 allows the Court to appoint either a Court appointed attorney or GAL when required by the Servicemembers Civil Relief Act or a "person under a disability" as defined by Va. Code §8.01-2 (See Va. Code §8.01-9). Compensation for the court appointed attorney or GAL shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of $120.00 in district courts and to a cap of $158.00 in circuit courts.

## Determining Who Should Pay

When ordering the parents (or the parties with a legitimate interest) to reimburse the Commonwealth, the court should consider the total amount for which the parents (or other parties with a legitimate interest) will be responsible and apportion this amount, as appropriate, between identified parents (or other parties with a legitimate interest). When a determination concerning paternity is pending, the court should suspend imposition of an order seeking reimbursement from the parent (or other party with a legitimate interest) until such a determination is finalized.

## Determining When to Assess

When the guardian ad litem appointment is made in the context of a multi-stage set of proceedings, such as child dependency cases, this reimbursement assessment should be made by the court at each discrete stage of the process, when an appealable order is entered, and payment for the guardian ad litem is authorized. A guardian ad litem can serve for a series of proceedings, and the identified parents can change as the case progresses.

If a Guardian ad litem is appointed to represent a juvenile, the assessment of the GAL fee only applies in cases arising under Va. Code § 16.1-241(a), which includes most abuse, neglect, foster care, CHINS, CHINSUP and custody/visitation.

**NOTE:** No GAL fee should be assessed to the parent of a juvenile when appointed to cases involving protective orders.

## Determining the Ability to Pay

The Appropriations Act does not specify a threshold or a mechanism for determining the ability of the parents (or the other parties with a legitimate interest) to pay all or a portion of the costs of the guardian ad litem. In order to lend some regularity and practicality to this process, OES recommends that the court employ procedures that are parallel with existing procedures, to the extent possible. The assessment of costs to the parents (or to the other parties with a legitimate interest) of guardian ad litem fees is authorized by Va. Code § 16.1-267 and by the Appropriations Act, Acts of Assembly.

Financial information should be collected from the potentially responsible parties using form DC-606, Financial Statement For Assessment of Guardian *Ad Litem* Costs. Collection of information through this vehicle will provide the court with a picture of the relative abilities of the parties to pay and afford some consistency in the court's determinations about the ability to pay over the range of cases affected.

One important difference between the financial inquiry presumed by the mandate of the Appropriation Act and the appointment of counsel in criminal matters is that the latter has a clear threshold. The Appropriation Act does not define "ability to pay" and does not tie this determination to indigency. To assist courts in making the ability to pay determination, it is recommended the Table to Govern the Reimbursement of GAL Fees and Expenses Using Federal Poverty Guidelines Plus 25% be used. This table of graduated available funds is associated with graduated reimbursement amounts of guardian ad litem service costs. The Committee on District Courts has endorsed this approach.

In determining the ability of the parents (or the other parties with a legitimate interest) to pay all or a portion of the costs of the services of the guardian ad litem, the following principles are recommended:

- Each potentially responsible parent (or party with a legitimate interest) should complete form DC-606, Financial Statement For Assessment of Guardian *Ad Litem* Costs.
- Any parent (or party with a legitimate interest) who currently receives public assistance as noted on the DC-606, Financial Statement For Assessment of Guardian *Ad Litem* Costs shall not be assessed any portion of the costs of the GAL's services.
- Any parent (or party with a legitimate interest) who has been determined to be indigent for the purpose of the appointment of counsel shall not be assessed any portion of the costs of the GAL's services.

- Any parent (or party with a legitimate interest) who is otherwise determined to be indigent shall not be assessed any portion of the costs of the GAL's services. A threshold determination in making this judgment is that a parent who has available funds at or below 125% of the Federal Poverty Guideline should not be assessed any portion of the costs of the GAL's services.
- After consideration of the information provided on form DC-606, Financial Statement For Assessment of Guardian *Ad Litem* Costs by the parent (or the party with a legitimate interest) and a determination of his/her available funds, the court should consult the Table to Govern the Reimbursement of GAL Fees and Expenses Using Federal Poverty Guidelines Plus 25% in order to identify the expected parent's (or the expected party's with a legitimate interest) contribution to the GAL's fees and expenses.
- Utilization of the table and the assessment of the GAL's costs of services against the parents (or the parties with a legitimate interest) are within the discretion of the court, considering the unique circumstances of the litigants in each case.

## Ordering Payment of The Assessment; Due Date

Following a determination that the parents (or the parties with a legitimate interest) are able to pay all or a portion of the costs of services of the GAL, the court should prepare an order assessing the parents (or the parties with a legitimate interest) in full or in part for the GAL's costs. The recommended practice is to serve form DC-533, Assessment/Payment Order on the parent (or the party with a legitimate interest) in person at the conclusion of the court hearing. Otherwise, form DC-533, Assessment/Payment Order should be mailed to the parents (or the parties with a legitimate interest) and the guardian ad litem. The amount assessed by the court is due on the date on which the order is entered if the parent (or the party with a legitimate interest) is before the court or within fifteen days if the order is mailed, unless the judge authorizes the parent (or the party with a legitimate interest) to pay at a date in the future.

## Collection of The Assessment

The procedures for collection of fees assessed by the courts against parents (or parties with a legitimate interest) parallel those for court-appointed counsel assessments. The judge may delegate to the clerk's office responsibility for establishing the time and method for the parent (or party with a legitimate interest) to pay a deferred assessment that has been authorized by the judge. See Va. Code § 19.2-354. However, the parent (or party with a legitimate interest) shall not be assessed the $10 time-to-pay fee noted in this statute. The J&DR courts should use the petition section of form DC-210, Acknowledgment of Suspension or Revocation of Driver's License and Circuit Courts should use form CC-1379, Order And Notice Of Deferred/ Installment Payment to document these arrangements with the parent (or the party with a legitimate interest). Suspension or revocation of the driver's license is not authorized in these cases upon default of payment.

An individual account in the Financial Management System (FMS) for the amount assessed

against the parents (or parties with a legitimate interest) will be established by the Clerk's Office. Ten days before the due date of an unpaid assessment the Financial Management System (FMS) will generate form DC-224, Notice to Pay for the court to mail to the delinquent parent (or party with a legitimate interest). If the parents (or the parties with a legitimate interest) do not meet their established financial obligations, that account will be considered delinquent and will be processed in the manner courts use to collect delinquent accounts, whether through the Commonwealth's Attorney, a collection agent utilized by the Commonwealth's Attorney, or the Department of Taxation. See Va. Code § 19.2-349. An additional collection remedy is authorized by the Setoff Debt Collection Act in Va. Code §§ 58.1-520 through 58.1-535. To assist the court with identifying these cases, the Case Management System (CMS) for J&DR and circuit courts indicates whether or not the court has addressed the issue of assessment against the parents/guardian (or other party with a legitimate interest).

# Chapter 8 - Guidelines for Payment of Guardians *Ad Litem* for Incapacitated Adults

## Introduction

Upon the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian *ad litem* to represent the interests of the respondent. The guardian *ad litem* shall be paid such fee as is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs. Va. Code § 64.2 -2003. This appointment must be made in accordance with the provisions of Chapter 921 of the 1997 Acts of Assembly, Clause 3, and the Standards of the Judicial Council of Virginia applicable to the appointment of guardians ad litem for incapacitated persons.

Payment for attorneys who serve as guardians ad litem for incapacitated persons will be made in accordance with guidelines established by the Supreme Court. The Supreme Court has approved the policy that guardians *ad litem* shall be compensated $87 per hour for in-court service and $63 per hour for out-of-court service. There is no limitation on these payments for hours that are documented and approved by the judge who appointed the guardian ad litem. The court is authorized to pay for the reasonable expenses of the guardian *ad litem* in representing the incapacitated person. Va. Code § 64.2-2008. The method for documenting payment as a guardian *ad litem* is the same as that used for court-appointed counsel. See form DC-40, LIST OF ALLOWANCES.

# APPENDIX

# Appendix A - FORMS

## I. DC-40, LIST OF ALLOWANCES

### A - Front

**LIST OF ALLOWANCES**
Commonwealth of Virginia

VENDOR INVOICE NO. .....
VENDOR REFERENCE ..... (MAXIMUM 23 CHARACTERS)

..... CITY OR COUNTY

[ ] General District Court [ ] Traffic [ ] Criminal
[ ] Juvenile & Domestic Relations District Court [ ] Circuit Court

..... VENDOR F.I.N. OR SOCIAL SECURITY NUMBER

..... PAY TO THE ORDER OF: FIRM, COMPANY, OR INDIVIDUAL

..... ADDRESS

..... CITY, STATE, ZIP

**CERTIFICATE OF ALLOWANCE FOR PAYMENT**
Having reviewed this account and determined that the form is properly completed and the account unpaid, I hereby certify this account to the Supreme Court of Virginia for payment.

_____ _____/_____/_____
CLERK/DEPUTY CLERK DATE

| Defendant's Name | Case Number | Original Code § Charged | Chart of Allowances Code § |
|---|---|---|---|
| | __ __ __ __ __ __ __ __ __ __ __ | | |

Trial/Service Date: / / | Specify case type: __ Adult __ Juvenile | For district court felony, was case certified? __ Yes __ No

For adult criminal and juvenile delinquency cases, specify offense type or equivalent:
__ Misdemeanor __ Felony (Class 1) __ Felony (Class 2) __ Felony (Class 3-6)
__ Felony (unclass., punish. more than 20 yrs.) __ Felony (unclass., punish. 20 yrs. or less)
Probation Violation? __ Yes __ No (required) __ Mandatory minimum life sentence
Disposition: ___ Guilty/Delinq. ___ Not Guilty/Not Delinq. ___ Nolle Pros. ___ Defer/Dismiss ___ Dismissed ___ Other _____

**OR**

For other juvenile ct. cases, specify type of representation and client: ___ ___ ___ –___
If CAC, parental rights termination §16.1-283? __Yes
Appeal from juvenile court? __ Yes __No

Itemize expenses (include receipt for any over $20): _____
Calculate total time spent for charge: Fee amount claimed (not to exceed cap): $_____
In Court time: ___Hrs. ___Min. $_____ Total expenses: $_____
Out of Court time: ___Hrs. ___Min. $_____ Waiver amount requested: $_____
**Total:** $_____ **Total amount claimed:** $_____

**Court Use Only – Amount Allowed:**
Fee amount: $_____
Expenses: $_____
Waiver amount: $_____
**Total:** $_____

| Defendant's Name | Case Number | Original Code § Charged | Chart of Allowances Code § |
|---|---|---|---|
| | __ __ __ __ __ __ __ __ __ __ __ | | |

Trial/Service Date: / / | Specify case type: __ Adult __ Juvenile | For district court felony, was case certified? __ Yes __ No

For adult criminal and juvenile delinquency cases, specify offense type or equivalent:
__ Misdemeanor __ Felony (Class 1) __ Felony (Class 2) __ Felony (Class 3-6)
__ Felony (unclass., punish. more than 20 yrs.) __ Felony (unclass., punish. 20 yrs. or less)
Probation Violation? __ Yes __ No (required) __ Mandatory minimum life sentence
Disposition: ___ Guilty/Delinq. ___ Not Guilty/Not Delinq. ___ Nolle Pros. ___ Defer/Dismiss ___ Dismissed ___ Other _____

**OR**

For other juvenile ct. cases, specify type of representation and client: ___ ___ ___ –___
If CAC, parental rights termination §16.1-283? __Yes
Appeal from juvenile court? __ Yes __No

Itemize expenses (include receipt for any over $20): _____
Calculate total time spent for charge: Fee amount claimed (not to exceed cap): $_____
In Court time: ___Hrs. ___Min. $_____ Total expenses: $_____
Out of Court time: ___Hrs. ___Min. $_____ Waiver amount requested: $_____
**Total:** $_____ **Total amount claimed:** $_____

**Court Use Only – Amount Allowed:**
Fee amount: $_____
Expenses: $_____
Waiver amount: $_____
**Total:** $_____

| Defendant's Name | Case Number | Original Code § Charged | Chart of Allowances Code § |
|---|---|---|---|
| | __ __ __ __ __ __ __ __ __ __ __ | | |

Trial/Service Date: / / | Specify case type: __ Adult __ Juvenile | For district court felony, was case certified? __ Yes __ No

For adult criminal and juvenile delinquency cases, specify offense type or equivalent:
__ Misdemeanor __ Felony (Class 1) __ Felony (Class 2) __ Felony (Class 3-6)
__ Felony (unclass., punish. more than 20 yrs.) __ Felony (unclass., punish. 20 yrs. or less)
Probation Violation? __ Yes __ No (required) __ Mandatory minimum life sentence
Disposition: ___ Guilty/Delinq. ___ Not Guilty/Not Delinq. ___ Nolle Pros. ___ Defer/Dismiss ___ Dismissed ___ Other _____

**OR**

For other juvenile ct. cases, specify type of representation and client: ___ ___ ___ –___
If CAC, parental rights termination §16.1-283? __Yes
Appeal from juvenile court? __ Yes __No

Itemize expenses (include receipt for any over $20): _____
Calculate total time spent for charge: Fee amount claimed (not to exceed cap): $_____
In Court time: ___Hrs. ___Min. $_____ Total expenses: $_____
Out of Court time: ___Hrs. ___Min. $_____ Waiver amount requested: $_____
**Total:** $_____ **Total amount claimed:** $_____

**Court Use Only – Amount Allowed:**
Fee amount: $_____
Expenses: $_____
Waiver amount: $_____
**Total:** $_____

I certify that the above claim for fees and/or expenses is true and accurate and that no compensation for the time or services set forth has previously been received.
___ I was appointed and served as co-counsel in the above cases.

_____ _____/_____/_____ _____
VENDOR'S SIGNATURE DATE VSB MEMBER NUMBER

**AMOUNT CERTIFIED FOR PAYMENT** $_____

I have reviewed the foregoing information and authorize the amount allowed to the vendor named above.

..... NAME OF JUDGE (PRINTED)

_____ JUDGE _____/_____/_____ DATE

Voucher # _____ (OES USE ONLY)

_____ CHIEF JUDGE _____/_____/_____ DATE
(Chief Judge's signature required when fee for additional waiver is allowed per Form DC-40(A))

FORM DC-40 FRONT 07/25

## B - Reverse

**INSTRUCTIONS**

This form is to be used to recover fees and other allowable expenses incurred by court-appointed counsel, guardians *ad litem*, expert witnesses, court reporters, mediators, and others authorized by the court.

**Vendor Invoice Number** – This number, shown in red on the front of this form, will be on the check stub when payment is made.
**"Vendor Reference" field** – You may include a personal Vendor Reference of not more than 23 characters, which will be printed on the check stub. Do not use any characters other than numbers or letters.
You will not receive a copy of this form with the check. Retain vendor copy of this LIST OF ALLOWANCES for reference.
**"Case Number" field** – Include complete twelve-character alphanumeric court case number (i.e., JA0000060100 or GT0200000100).

**COURT-APPOINTED COUNSEL**

To receive compensation for representation of an indigent person pursuant to Code § 19.2-163, a detailed accounting of the time expended for the representation must be submitted to the court within 30 days of the completion of all proceedings in that court. To comply with this requirement, please submit this form and, where appropriate, attach an Attorney Time Sheet. If co-counsel (more than one attorney) is appointed to represent a defendant at the same time in a case that is not a Class 1 felony or is not a felony punishable by a mandatory minimum term of confinement for life, then co-counsel shall share the statutory fee, supplemental statutory waiver amount, and fee for additional waiver permitted for one attorney.
**"Trial/Service Date" field** – The date the case was concluded in the court having authority to certify the account for payment.
**"In Court" and "Out of Court" time fields** – Time spent for each charge must be listed separately. The total amount allowed for each charge is the sum of the fee amount, expenses and any waiver amount allowed. The fee amount is the total of In Court time and Out of Court time up to the statutory fee cap. Itemization must accompany all expenses claimed, and receipts are required for each expense over twenty dollars. The "Total amount claimed" for each charge is the sum of the fee amount claimed, expenses and any waiver amount requested.
**Requests For Waiver** – Any court-appointed attorney seeking a waiver of the statutory fee amount must complete an APPLICATION FOR AND APPROVAL / DENIAL FOR WAIVER OF FEE CAP (Form DC-40(A)) for each charge and present it to the court with this form.
**"Waiver amount requested" field** – Use when a waiver of the statutory fee amount has been requested. The total waiver amount requested for the charge on the Form DC-40(A) should be listed.

**JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS: NON-CRIMINAL AND NON-DELINQUENCY CASES**

| Court appointment for: | Type of Representation and Client | Type of Case | Insert in "Original Code § Charged" field | Insert in "Chart of Allowances Code §" field |
|---|---|---|---|---|
| Juvenile | CAC-J | CHINS | §16.1-266(B) | §16.1-267 |
| Juvenile | GAL-J | Abuse and Neglect; Entrustment; Termination of Parental Rights; Relief of Custody | §16.1-266(A) | §16.1-267 |
| Parent, Other Guardian | CAC-M, F or O | Child Dependency case as defined in §16.1-266.1 - Civil | §16.1-266(D) | §16.1-267 |
| Parent, Guardian, Other Adult incarcerated, mental illness or intellectual disability (DC-514 order) | GAL-M, F or O | Civil cases: Abuse and Neglect; Termination of Parental Rights; Entrustment; Relief of Custody | §16.1-266(E) depending on circumstances | §19.2-163 |
| Juvenile, Parent, Guardian | GAL-J, M, F or O<br>CAC-J, M, F or O | All other cases | §16.1-266(E) or §16.1-266(F) | §16.1-267 or §19.2-163 |

**"Representation and client type" field ( __ __ __ - __ )** – Use when vendor is a guardian *ad litem* or court-appointed counsel in a non-criminal and non-delinquency case from juvenile court. Specify "G A L" if guardian *ad litem* or "C A C" if court-appointed counsel. Specify who was being represented: "J" (for Juvenile),"M" (for Mother), "F" (for Father) or "O" (for other Adult or Guardian) (e.g., a guardian *ad litem* appointed to represent a juvenile should specify "G A L - J").

**ALL COURTS**

| Service Provider | Insert in "Original Code § Charged" field | Insert in "Chart of Allowances Code §" field |
|---|---|---|
| Court-appointed counsel for Delinquency Case | Insert applicable charge cite(s) | §16.1-267 |
| Court-appointed counsel for Adult Defendant | Insert applicable charge cite(s) | §19.2-163 |
| Blood Withdrawal | Applicable criminal cite | §18.2-268.8 |
| GAL for Minor Witness – in General District Court or subsequent appeal to Circuit Court OR in Circuit Court pursuant to §8.01-396.2(D) | §8.01-396.2 | §8.01-396.2 |

For those allowances not listed above, please refer to the CHART OF ALLOWANCES for the appropriate code section to insert. The CHART OF ALLOWANCES may be found online at https://www.vacourts.gov.

**"VSB Member Number" field** – For any attorney seeking compensation as a guardian *ad litem* or as court-appointed counsel, your Virginia State Bar member number is a required field.

**TIME FOR PAYMENT** – This LIST OF ALLOWANCES should be processed within 30 days of the local court certifying the amount for payment and submitting it to the Office of the Executive Secretary of the Supreme Court of Virginia. Payment will be mailed unless the vendor has enrolled in the direct deposit service available at https://www.doa.virginia.gov/reference/EDI/TradingPartnerGuide.pdf.
The amount paid pursuant to this document will be reported to the IRS, where applicable, using the referenced vendor F.I.N. or social security number and name. A matching Form W-9 must be on file prior to payment.

FORM DC-40 REVERSE 07/25

# II. DC-40A, Application for and Approval/Denial for Waiver of Fee Cap

## A – Page 1

**APPLICATION FOR AND APPROVAL/DENIAL FOR WAIVER OF FEE CAP**

Case No. .....

Commonwealth of Virginia VA. CODE § 19.2-163

Vendor Invoice No. .....

[ ] General District Court [ ] Circuit Court
[ ] Juvenile and Domestic Relations District Court

..... CITY OR COUNTY

..... PRESIDING JUDGE

..... CHARGE AT TIME OF APPOINTMENT (CODE SECTION)

..... DEFENDANT'S NAME

..... DATE OF APPOINTMENT

..... DATE CASE CONCLUDED

..... COUNSEL'S NAME ADDRESS CITY STATE ZIP

Please explain in detail the basis for your request for waiver of the fee cap (Attach Form DC-40, LIST OF ALLOWANCES and Attorney Time Sheet):

My representation of this client on this charge required additional time and effort:

.....

.....

My representation of this client on this charge presented novel and difficult issues:

.....

.....

My representation of this client on this charge involved the following circumstances which warrant a waiver:

.....

.....

**PLEASE CHECK ALL THAT APPLY:**

1. [ ] On the basis of the factors above, I request that the Court waive the otherwise applicable statutory fee cap and approve supplemental statutory waiver compensation in the amount of $ ..... . (See instructions on pages 2 and 3 for supplemental statutory waiver amount which can be requested.)
2. [ ] On the basis of the factors above, I request that the presiding judge and the chief judge approve an additional waiver in the amount of $ ..... .

I certify that the above claim for fees is true and that no compensation for these services has previously been received.

..... DATE _____ COUNSEL SIGNATURE ..... VSB MEMBER NUMBER

**FOR COURT USE ONLY:**

1. [ ] I approve supplemental statutory waiver compensation in the amount of $ ..... for the following reason(s):

.....

.....

[ ] Supplemental statutory waiver request is denied.

_____
JUDGE DATE

2. [ ] I find justified an additional waiver in the amount of $ ..... for the following reason(s):

.....

.....

[ ] The request for an additional waiver is not justified in whole or in part for the following reason(s):

.....

_____
PRESIDING JUDGE DATE

Additional waiver as approved by the presiding judge is [ ] approved [ ] denied. The request for an additional waiver is not justified in whole or in part for the following reason(s):

[ ] as indicated by the presiding judge [ ] .....

_____
CHIEF JUDGE DATE

FORM DC-40(A) (MASTER, Page 1 of 3) 01/25 **RETAIN IN COURT FILE**

## B – Page 2

### General Information and Instructions

**Fee waivers may only be awarded by the court in which the case is concluded.**

The General Assembly has authorized the schedule on the next page for compensation for court-appointed counsel in cases other than Class 1 felonies. If co-counsel (more than one attorney) is appointed to represent a defendant at the same time in a case that is not a Class 1 felony or is not a felony punishable by a mandatory minimum term of confinement for life, then co-counsel shall share the maximum total compensation permitted for one attorney as set forth above. Upon submission by counsel of a detailed accounting of time expended for court-appointed representation, the court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of fees and authorize additional compensation up to the supplemental statutory waiver amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Counsel may also request additional compensation exceeding these amounts by submitting a written request with a detailed accounting of the time spent and justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether this request for additional compensation above the supplemental statutory waiver amount is justified, in whole or part, by considering the effort expended and time reasonably necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge of the circuit court or district court for approval. Additional guidelines are posted at https://www.vacourts.gov/courtadmin/aoc/fiscal/home and https://www.vacourts.gov/forms/district/statutory_criteria_fee_cap_waiver_guidelines.pdf.

**There is no appeal process available if an application for waiver of fee cap is denied.** Additionally, if at any time the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.

If you believe that your representation of an indigent defendant warrants consideration for an additional payment, please complete the reverse side of this form and present it to the court along with your standard request for payment (Form DC-40, LIST OF ALLOWANCES) and your Attorney Time Sheet. You must complete a separate application for each charge for which you are requesting a waiver of the fee cap. This form along with the Attorney Time Sheet shall be retained in the court file.

Additional Instructions:
**Date of Appointment** is the original date any court assigned the representation to you.
**Date Case Concluded** is the date representation ended in the case for which you are seeking payment.

## B – Page 3

VIRGINIA CODE § 19.2-163 PROVIDES THE FOLLOWING FEES FOR COURT-APPOINTED COUNSEL:
(Effective for cases concluded on or after January 1, 2025)

| **Court** | **Charge*** | Statutory Fee | Supplemental Statutory Waiver Amount |
|---|---|---|---|
| District | Misdemeanor (except for statutes in below box) | $330 | Up to $120 |
| District | Misdemeanor under § 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Up to $120 |
| District | Probation Violation | $180 | Up to $120 |
| Juvenile and Domestic Relations District | Delinquency | $680 | Up to $120 OR Up to $650 if Equivalent to Class 2 Felony |
| Juvenile and Domestic Relations District | Probation Violation for Delinquency | $180 | Up to $120 OR Up to $650 if Probation Violation for Equivalent to Class 2 Felony |
| District | (If resolved in District Court) Felony, Class 3 to 6 (except for statutes in below box) | $834 | Up to $155 |
| District | (If resolved in District Court) Felony, Class 2 OR Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 | $1,692 | Up to $850 |
| Circuit | Felony, Class 3 to 6 (except for statutes in below box) | $834 | Up to $155 |
| Circuit | Felony, Class 2 OR Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 | $1,692 | Up to $850 |
| Circuit | Probation Violation for Felony (except if Probation Violation for Class 1 Felony) | $445 | Up to $155 OR Up to $850 if Probation Violation for Class 2 Felony or for Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 |
| Circuit | Misdemeanor (except for statutes in below box) | $330 | Not Available |
| Circuit | Misdemeanor under § 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Not Available |
| Circuit | Probation Violation for Misdemeanor Punishable by Jail | $180 | Not Available |
| Circuit | Juvenile Adjudication on Appeal | $680 | Not Available |
| Circuit | Probation Violation for Appealed Juvenile Adjudication | $180 | Not Available |
| *Defense of an unclassified felony punishable by 20 years or less is compensated as a Class 3 or 4 Felony, or by more than 20 years as a Class 2 Felony. | | | |
| Fee for additional waiver is in the discretion of the court. | | | |

*Office of the Executive Secretary of the Supreme Court of Virginia* January 1, 2025

FORM DC-40(A) (MASTER, Page 3 of 3) 01/25

## III. DC-51, ROTATION LIST COURT APPOINTED ATTORNEY

| ATTORNEY | DEFENDANT | CASE NO. | DATE APPOINTED | COMMENTS | VOUCHER DATE |
|---|---|---|---|---|---|
| | | | | | |

## IV. DC-52, Public Defender Time Sheet

**PUBLIC DEFENDER TIME SHEET**
Commonwealth of Virginia

PUBLIC DEFENDER: .....
NAME

.....
ADDRESS

.....
ADDRESS

COURT: ☐ Circuit ☐ General District ☐ Juvenile and Domestic Relations District

☐ Commonwealth VS/In Re: .....

☐ Locality Court Date: .....

☐ Number of Charges and Code Sections Case Number(s): .....

.....
CODE SECTIONS

THIS FORM MUST BE SUBMITTED TO THE COURT AND SIGNED BY THE ATTORNEY AT THE TIME OF TRIAL.

| TIME | HOURS | MINUTES | RATE | AMOUNT |
|---|---|---|---|---|
| In Court | | | | |
| Out of Court (Includes research, interview, other) | | | | |

**EXPENSES**

Please itemize and attach invoices _____ _____

Add items on reverse side of form _____

**TOTAL:** _____

I certify that the above detailed time and expenses are accurate.

.....
DATE

_____
ATTORNEY

AMOUNT ALLOWED: .....

.....
DATE

_____
JUDGE

FORM DC-52 7/01

# V. DC-533, ASSESSMENT/PAYMENT ORDER

**ASSESSMENT/PAYMENT ORDER** Case No. .....
Commonwealth of Virginia
Va. Code §§ 16.1-267, 16.1-274

[ ] Circuit Court
..... [ ] Juvenile and Domestic Relations District Court

..... v./*In re* .....

**INVESTIGATION/MEDIATION/SUPERVISED VISITATION**

..... has provided the following services:
AGENCY

[ ] investigation
[ ] mediation
[ ] supervised visitation

Therefore, the court orders the assessment of the following fees pursuant to statutorily authorized guidelines, together with waiver (if any) of payment of fees as shown below:

[ ] Petitioner
$ ..... assessed and
[ ] $ ..... of payment of assessment is waived
[ ] no waiver of payment of assessment

[ ] Respondent
$ ..... assessed and
[ ] $ ..... of payment of assessment is waived
[ ] no waiver of payment of assessment

The agency named above shall determine the method and medium of payment.

**COURT-APPOINTED ATTORNEY'S FEES**

Legal counsel had been appointed to represent the juvenile in this case and the parents were informed of their liability for the attorney's fees. After an investigation, the court finds the parents able to pay the attorney's fees and ORDERS payment of such costs to this court as shown below.

$ ..... to be paid by parent, .....
[ ] MOTHER [ ] FATHER

$ ..... to be paid by parent, .....
[ ] MOTHER [ ] FATHER

**GUARDIAN *AD LITEM* COSTS FOR A CHILD**

A guardian *ad litem* was appointed in this case and the total amount allowed to ....., the guardian *ad litem*, was $ .....

[ ] The court finds that the [ ] parent ..... [ ] parent .....
[ ] MOTHER [ ] FATHER [ ] MOTHER [ ] FATHER

[ ] parents [ ] ..... is/are able to pay the guardian *ad litem* costs in whole or in part and ORDERS payment of such costs as shown below.

$ ..... to be paid by parent, .....

$ ..... to be paid by parent, .....

$ ..... to be paid by .....

[ ] The court finds that the [ ] parent ..... [ ] parent .....
[ ] MOTHER [ ] FATHER [ ] MOTHER [ ] FATHER

[ ] parents [ ] ..... is/are indigent or otherwise unable to pay.

.....
DATE

_____
JUDGE

FORM DC-533 MASTER 07/17

# VI. ATTORNEY TIME SHEET

**ATTORNEY TIME SHEET**

COMMONWEALTH OF VIRGINIA

Attorney's Name: _____ Page _____ of _____

Defendant's Name: _____ Case Number: _____

Charge at Time of Appointment (Code Section): _____ Vendor's Invoice Number _____

Use Additional Pages As Needed

| DATE | Brief Description of Services | In-Court Time (Actual Hours/Minutes) | Out of Court Time (Actual Hours/Minutes) | Compensation (Not to exceed $90 per hour) | Additional Expenses Incurred |
|---|---|---|---|---|---|
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RETAIN IN COURT FILE

# Appendix B - CHARTS

## I. GUARDIAN AD LITEM FEES AND EXPENSES

Please utilize the link to the Table To Govern The Reimbursement Of GAL Fees And Expenses for the most recent information.

## II. ELIGIBILITY FOR COURT-APPOINTED COUNSEL

Please utilize the link to the Eligibility for Court-Appointed Counsel for the most recent information.

# Appendix C - CHART OF ALLOWANCES

VIRGINIA CODE § 19.2-163 PROVIDES THE FOLLOWING FEES FOR COURT-APPOINTED COUNSEL:
(Effective for cases **concluded** on or after January 1, 2025)

| Court | Charge* | Statutory Fee | Supplemental Statutory Waiver Amount |
|---|---|---|---|
| District | Misdemeanor (except for statutes in below box) | $330 | Up to $120 |
| District | Misdemeanor under § 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Up to $120 |
| District | Probation Violation | $180 | Up to $120 |
| Juvenile and Domestic Relations District | Delinquency | $680 | Up to $120 OR Up to $650 if Equivalent to Class 2 Felony |
| Juvenile and Domestic Relations District | Probation Violation for Delinquency | $180 | Up to $120 OR Up to $650 if Probation Violation for Equivalent to Class 2 Felony |
| District | (If resolved in District Court) Felony, Class 3 to 6 (except for statutes in below box) | $834 | Up to $155 |
| District | (If resolved in District Court) Felony, Class 2 OR Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 | $1,692 | Up to $850 |
| Circuit | Felony, Class 3 to 6 (except for statutes in below box) | $834 | Up to $155 |
| Circuit | Felony, Class 2 OR Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 | $1,692 | Up to $850 |
| Circuit | Probation Violation for Felony (except if Probation Violation for Class 1 Felony) | $445 | Up to $155 OR Up to $850 if Probation Violation for Class 2 Felony or for Felony Violation of § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1 or 18.2-371.1 |
| Circuit | Misdemeanor (except for statutes in below box) | $330 | Not Available |
| Circuit | Misdemeanor under § 18.2-266, 18.2-266.1, 18.2-270 or 46.2-341.24 | $448 | Not Available |
| Circuit | Probation Violation for Misdemeanor Punishable by Jail | $180 | Not Available |
| Circuit | Juvenile Adjudication on Appeal | $680 | Not Available |
| Circuit | Probation Violation for Appealed Juvenile Adjudication | $180 | Not Available |
| *Defense of an unclassified felony punishable by 20 years or less is compensated as a Class 3 or 4 Felony, or by more than 20 years as a Class 2 Felony. | | | |
| Fee for additional waiver is in the discretion of the court. | | | |

*General Information and Instructions*

Fee waivers may only be approved by the court in which the case is concluded.

The General Assembly has authorized the above schedule for compensation for an attorney appointed by the court in a case other than a Class 1 Felony. If co-counsel (more than one attorney) is appointed to represent a defendant at the same time in a case other than a Class 1 Felony or mandatory life offense, then co-counsel shall share the statutory fee, supplemental statutory waiver amount, and fee for additional waiver permitted for one attorney. In the circuit court, court-appointed counsel who is granted leave of court to withdraw and who terminates the representation prior to conclusion of the case, is eligible for the statutory fee and the supplemental statutory waiver amount but is ineligible for a fee for additional waiver.

Calculation of time expended for court-appointed representation should reflect actual time spent out of court preparing for cases and actual time spent representing clients in court. When an attorney is in court representing multiple defendants on the same day or representing one defendant for multiple charges on the same day, calculation of the total actual time spent in court should be apportioned among defendants and/or among charges accordingly. For example, if court-appointed counsel is in court on one day for five hours representing five clients, the total time that is allowable for being in court on that day is five hours. In that instance, it might be appropriate to record one hour of in-court time for each defendant on that date, or some other division of time more accurately reflecting the time spent for each defendant. Similarly, if court-appointed counsel spends five hours in court representing one defendant for three separate charges, the total time that is allowable is five hours for all three charges. In the examples above, court-appointed counsel should not record five hours of in-court time for each of the five defendants or for each individual charge, which would result in improper duplicate payments that do not reflect the total actual time spent in court on that day. Total actual time spent out of court should be apportioned in the same manner.

Upon submission by counsel of a detailed accounting of time expended for court-appointed representation,[1] the court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of the statutory fee and authorize additional compensation up to the supplemental statutory waiver amount when the effort expended by counsel, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.

Counsel may also request additional compensation exceeding these amounts by submitting a written request with a detailed accounting of the time spent[2] and justification for the additional amount. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether this request for additional compensation above the supplemental statutory waiver amount is justified, in whole or part, by considering the effort expended and time reasonably necessary for the particular representation, and, if so, shall

[1]Time shall be recorded in increments not greater than .10 hour (6 minutes). The hourly rate for court-appointed counsel, including guardians ad litem, is considered to include staff time and office overhead. Therefore, court-appointed counsel, including guardians ad litem, should not bill for staff time or office overhead, unless it is expressly authorized by law.

[2]Time shall be recorded in increments not greater than .10 hour (6 minutes). The hourly rate for court-appointed counsel, including guardians ad litem, is considered to include staff time and office overhead. Therefore, court-appointed counsel, including guardians ad litem, should not bill for staff time or office overhead, unless it is expressly authorized by law.

forward the request as approved to the chief judge of the circuit court or district court for approval.

If both the presiding judge and the chief judge determine that an additional amount is justified based upon the novelty, difficulty, effort expended and time required for the particular representation and they approve a fee for such an additional waiver amount greater than:

- $2,500 in any district court,
- $3,750 in any circuit court misdemeanor or circuit delinquency charge,
- $6,250 in any circuit court felony, class III to VI charge, or
- $18,750 in any circuit court felony class II charge,

then such request for an additional waiver amount in excess of the foregoing amounts shall be submitted by the Chief Judge to the Office of the Executive Secretary, with the DC-40A and all supporting documentation, and upon review by the Chief Justice of the Supreme Court, may be paid in full, or in lieu of full payment, be approved for a partial payment. Partial payments shall be made only in the event the Chief Justice finds such partial payment is necessary to promote the equitable distribution of waiver funds through the end of the fiscal year.

These procedures are in addition to guidelines posted at https://www.vacourts.gov/forms/district/statutory_criteria_fee_cap_waiver_guidelines.pdf

The payment approval process,[3] including review and approval of invoices by the Office of the Executive Secretary, is a function of the Supreme Court of Virginia's oversight of the judiciary's budget and management of funds, including the Criminal Fund. Fee waivers are paid from a finite appropriation allocated to the fiscal year. The foregoing process is necessary to facilitate the fair distribution of funds as provided for in the Code of Virginia and the Budget.[4]

There is no appeal process available if an application for waiver of fee caps is denied. Additionally, if at any time the funds appropriated to pay for waivers become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved or paid.

# Appendix D - MANUAL UPDATES

| # | CHAPTER | SECTION | DESCRIPTION | |
|---|---|---|---|---|
| A | Forms | DC-40, LIST OF ALLOWANCES,<br>DC-40A, APPLICATION FOR AND APPROVAL /DENIAL FOR WAIVER | Insert current version | July, 2026 |
| C | Chart of Allowances | Chart of Allowances | Insert current version | July, 2026 |
| 2 | Guidelines for Determining Eligibility for Court-Appointed Counsel | Indigency Formula | Updated Chart with current calculations | January, 2026 |
| 6 | Recovery of Court-Appointed Counsel and Public Defender Costs | Recovery of Court Public Defender Costs | Examples updated with current court appointed compensation rates | January, 2026 |
| 7 | Guidelines for Payment of Guardians Ad Litem for Children | Introduction; Compensating the Guardian Ad Litem; | Updated Guardian *Ad Litem* hourly rates | July, 2026 |
| 7 | Guidelines for Payment of Guardians Ad Litem for Children | Determining the Ability to Pay | Replaced DC-333 references with DC-606 | July, 2026 |
| 8 | Guidelines for Payment of Guardians *Ad Litem* for Incapacitated Adults | Introduction | Updated Guardian *Ad Litem* hourly rates | |