WEST VIRGINIA CODE: §29-21-16

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency's financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of §49-4-701 through §49-4-725 of this code. If the juvenile advises the court of his or her inability to pay for counsel, the court shall require the juvenile's parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the juvenile's parents, or, if applicable, the juvenile's custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the juvenile. If the financial affidavit demonstrates that either of the juvenile's parents, or, if applicable, the juvenile's custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the juvenile in the proceedings.

The court may disregard the assets of the juvenile's parents or custodian and appoint counsel for the juvenile, as provided in this section, if the court concludes, as a matter of law, that the juvenile and the parent or custodian have a conflict of interest that would adversely affect the juvenile's right to effective representation of counsel, or concludes, as a matter of law, that requiring the juvenile's parent or custodian to provide legal representation for the juvenile would otherwise jeopardize the best interests of the juvenile.

(d) In any circuit in which there exists a trial court administrator, the office of the administrator shall make determinations of indigency. In circuits in which a public defender office is in operation and a trial court administrator does not exist, all determinations of indigency shall be made by a public defender office employee designated by the executive director. In circuits in which no trial court administrator or public defender office is in operation, circuit judges shall make all determinations of eligibility. The determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions

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(1) through (9), subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make any inquiries necessary to determine whether the affiant has truthfully and completely disclosed the required financial information.

After reviewing all pertinent matters, the person determining eligibility may find the affiant eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

(e) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;

(3) Fixed debts and obligations, including federal, state, and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for the bond;

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(9) The consequences for the individual if legal assistance is denied.

(f) Legal representation requested by the affiant may not be denied, in whole or part, unless the affiant can obtain legal representation without undue financial hardship. A person determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify, or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior order providing legal representation. In that event, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to the appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and in juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation of appointed counsel, the expenses of the defense, and any other fees and costs authorized by statute;

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay, and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment if the person's financial circumstances change;

(3) When a person is ordered to repay costs, the court may order payment to be made immediately or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future;

(4) A person who has been ordered to repay costs, and who is not in contumacious default in the payment thereof, may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person's dependents, the court may modify the method or amount of payment;

(5) When a person ordered to pay costs is also placed on probation or imposition or

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execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who shall deposit the funds in the General Revenue Fund of the state.

(i) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this article. A person who has made an affidavit knowing the contents of the affidavit to be false may be prosecuted for false swearing as provided by law.

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