

## Office of the State Public Defender Administrative Policies

Subject: <b>Eligibility Determination</b>	Policy No.: <b>105</b>
Title <b>47</b>	Pages: <b>8</b>
Section: <b>1-111</b>	Last Review Date: <b>2-24-14</b>
Effective Date: <b>5-6-14</b>	Revision Date: <b>2-24-14</b>

### 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) will provide public defender services to applicants who qualify under 47-1-111, MCA.
- 1.2 Certain clients determined to be eligible for public defender services may be required to pay for the cost of counsel per 46-8-113.

### 2.0 DEFINITIONS

- 2.1 **Household:** an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.
  - 2.1.1 The term does not include bona fide lessees, tenants, or roomers and boarders on contract.
- 2.2 **Hardship:** When evaluation of an applicant's disposable household income (gross household income less reasonable and necessary expenses), extent and liquidity of assets, severity of crime(s) charged, time period until next court hearing date, and local private counsel rates demonstrate an individual would incur substantial hardship to his/her family to retain competent private counsel, the applicant qualifies for public defender services.
- 2.3 **Presumptive Eligibility:** An applicant who is a current verified or documented recipient of a state or federally administered public assistance program such as TANF, SNAP or SSI/SSDI shall be considered presumptively eligible and, therefore, qualified for public defender services.
- 2.4 **Presumptive Indigence:** An individual who is unable to complete the application process for good cause may be considered qualified for public defender services, unless the Eligibility Specialist (ES) has independent information that the applicant has sufficient, independent financial resources to hire private counsel.
- 2.5 **Current Client Status:** An applicant who has been approved for public defender services based upon the gross income guidelines or certain hardship determinations will remain qualified for services in any new cases for a three month period from the original approval date. Upon expiration of the three month period, the applicant must submit a new application and financial documentation for any subsequent cases.

### **3.0 APPOINTMENT OF COUNSEL**

- 3.1** All district courts and courts of limited jurisdiction shall send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.
- 3.2** When a regional office receives an appointment from the court, OPD shall immediately assign counsel to the individual who, in turn, shall promptly complete the application for public defender services. OPD's representation of the individual shall continue unless OPD determines that the individual is not eligible for services and a motion to rescind is filed and granted by the Court.

### **4.0 APPLICATION FORM**

- 4.1** The Central Office shall provide the Regional Public Defender Offices with the Application for Court-Appointed Counsel forms as prepared by OPD and approved by the Montana Public Defender Commission.
- 4.2** Regional Deputy Public Defenders or their staff will make forms available to all jails and courthouses and any other venues deemed appropriate.

### **5.0 APPLICATION PROCEDURE**

- 5.1** An applicant for public defender services must complete the Application for Court-Appointed Counsel form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The Regional Public Defender Office will move to rescind the appointment if the required materials are not provided as requested.
  - 5.1.1** Certain applicants may be considered qualified for public defender services under special circumstances, including, but not limited to, Presumptive Eligibility, Presumptive Indigence and Current Client Status (see 2.0, Definitions). In some instances application requirements may be waived.
  - 5.1.2** An applicant may be required to provide documentation to verify income, expenses and assets. The office may move to rescind the appointment if the requested materials are not provided in a timely manner.
  - 5.1.3** Information on the Application for Court-Appointed Counsel form and all supporting documentation is confidential.
- 5.2** An ES will aid any applicant requesting assistance in completing the application.

## **6.0 ELIGIBILITY DETERMINATION**

- 6.1** Each Regional Deputy Public Defender will appoint an ES and a backup for the region. This information will be maintained in the Central Office.
- 6.2** Regional Deputy Public Defenders are an integral part of the eligibility determination process. They will sign motions to rescind appointments when required and will appear in court as needed. They will also assist the ES in making difficult determinations. However, the RDPD will not act as the ES and will not be involved in the eligibility determination process for any of their own cases.
- 6.3** The ES will review the Application for Court-Appointed Counsel form, obtain missing information, and assure that the form is signed by the applicant.
- 6.4** If Presumptive Eligibility, Presumptive Indigence or Current Client Status is not indicated, the ES will determine eligibility for services based on:
  - 6.4.1** Income: Gross household income falls within the Gross Income Guidelines (Attachment A), which are based on the federal poverty level; or
  - 6.4.2** Hardship: Retaining private counsel would result in substantial hardship to the applicant or his/her household (see 2.2, Definitions).
- 6.5** The income and assets of another household member will not be considered in the eligibility determination if the household member is the alleged victim of the offense(s) allegedly committed by the applicant.

## **7.0 ELIGIBILITY VERIFICATION**

- 7.1** The ES will verify income and assets for 10% of all applicants seeking qualification under the gross income guidelines 6.4.1.
- 7.2** The ES will verify the information on the application form for all applicants seeking a hardship qualification under 6.4.2, including but not limited to income and assets. Verification may include, but is not limited to, production of paystubs, monthly bank statements, unemployment, food stamps/SNAP, TANF, Social Security, SSI, SSDI, Worker's Compensation, pension/retirement and financial aid benefit statements, and/or other documentation requested by the ES. The ES will also do a property records search when indicated.
- 7.3** New or additional information regarding an applicant's income, assets and/or expenses may result in a redetermination of eligibility.

## **8.0 DISQUALIFIED APPLICANTS**

- 8.1** If the applicant does not qualify for public defender services, the ES shall send the applicant a written notice of disqualification together with a notice of right to judicial review of eligibility determination (see Attachment B, Standard Letter of Notification of Denial).
- 8.2** The Regional Deputy Public Defender shall immediately notify the court of record upon determination that an applicant does not qualify for public defender services (see Attachment C, Motion to Rescind Appointment).

- 8.3** The public defender shall continue to provide representation to the applicant until receipt of a signed order from the judge rescinding the appointment of counsel.
- 8.4** A judge may overrule a determination that an applicant is ineligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

**9.0 COMPLIANCE MONITORING**

OPD will monitor, on a systematic basis, regional compliance with statutory and administrative policies governing the eligibility determination process.

**10.0 CLOSING**

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**ATTACHMENT A**  
**GROSS INCOME GUIDELINES**

**2015**

<b>Household Size</b>	<b>Federal Poverty 100%</b>	<b>OPD Guidelines</b>			
		<b>133% Annual</b>	<b>133% Monthly</b>	<b>133% Bi- Weekly</b>	<b>133% Weekly</b>
1	11,770	15,654	1,305	602	301
2	15,930	21,187	1,766	815	407
3	20,090	26,720	2,227	1,028	514
4	24,250	32,253	2,688	1,240	620
5	28,410	37,785	3,149	1,453	727
6	32,570	43,318	3,610	1,666	833
7	36,730	48,851	4,071	1,879	939
8	40,890	54,384	4,532	2,092	1,046
Each Adttl	4,160	5,533	461	213	106

**ATTACHMENT B**

**STANDARD LETTER OF NOTIFICATION OF DENIAL**

Name  
Regional Deputy Public Defender  
Region (#)  
(Address)

(Date)

(Client Name)  
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your application form, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in \_\_\_\_\_ Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your application form available to the judge for inspection.

Sincerely,

Name  
Regional Deputy Public Defender

**ATTACHMENT C**

**MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER**

Name  
Regional Deputy Public Defender  
Region (#)  
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

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STATE OF MONTANA,	)	
	)	Cause No. _____
Plaintiff,	)	
	)	
v.	)	MOTION TO RESCIND
	)	APPOINTMENT OF PUBLIC
	)	DEFENDER
	)	
_____,	)	
	)	
Defendant.	)	

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COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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(Name)  
Regional Deputy Public Defender  
Region (#)

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.