

**GUIDELINES – ELIGIBILITY FOR SERVICES OF
MUNICIPAL PUBLIC DEFENDER AND WAIVER OF APPLICATION FEE
ADOPTED BY THE SUPREME COURT ON MARCH 16, 1998**

Procedures:

1. The Right to Counsel and Assignment of Counsel in the municipal courts shall be determined pursuant to R. 7:3-2, these guidelines and applicable law.
2. All proceedings concerning application for indigency determinations and assignment of counsel to a defendant shall be administered by the court.
3. The municipal court shall utilize the **Financial Questionnaire to Establish Indigency-Municipal Courts**, as prescribed by the Acting Administrative Director of the Courts, in conjunction with the **Income Eligibility Guidelines for Indigent Defense Services** approved by the Administrative Office of the Courts.

Indigent Defense Services approved by the Administrative Office of the Courts.

Eligibility Guidelines:

1. Prior to determining eligibility for the services of a public defender, the court shall determine whether defendant was charged in the municipal court with a crime as specified in N.J.S.A. 2B:12-18, or whether there is likelihood that defendant, if convicted of any other offense, will be subject to a term of imprisonment of other consequence of magnitude.
2. Whenever defendant under the age of eighteen faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel, eligibility for services of the public defender shall be determined on the basis of the financial circumstances of the individual and the financial circumstances of the individual's parents or legal guardians, pursuant to these guidelines.
3. In determining whether defendant is eligible for the services of a municipal public defender, the court shall consider defendant's need, measured in accordance with N.J.S.A. 2A:158A-14. Consistent with that statute, the court shall consider the following factors, as appropriate:
 - a. Defendant's financial ability to engage and compensate competent private counsel;
 - b. Defendant's current employment, salary and income, including prospects for continued employment if admitted to bail;
 - c. Defendant's liquid assets, including all real and personal property and bank accounts;
 - d. Whether defendant is incarcerated, defendant's ability to make bail, and the source of bail posted;

- e. Where appropriate, the willingness and ability to defendant's immediate family, friends or employer to assist defendant in meeting defense costs;
 - f. Where appropriate, an assessment of the probable and reasonable costs of providing a private defense, based upon the status of defendant, the nature and extent of the charges and the likely issues;
 - g. Where appropriate, defendant's ability to demonstrate convincingly that he or she has consulted at least three private attorneys, none of whom would accept the case for a fee within defendant's ability to pay;
 - h. Defendant's ability to provide all other necessary expenses of representation; and
 - i. Any other factors the court chooses to consider in the interest of justice.
4. The court shall consider the **Income Eligibility Guidelines for Indigent Defense Services** approved by the New Jersey Administrative Office of the Courts.
5. In the event that a determination of eligibility cannot be made prior to the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the Municipal Public Defender shall undertake the same provisionally, and if the court subsequently determines that the defendant is ineligible, it shall inform defendant of that determination. In that event, defendant shall be obligated to engage his own counsel and to reimburse the Office of the Municipal Public Defender for the cost of the services rendered to that time.

Waiver of Application Fee:

The following guidelines are applicable only if a municipality has adopted an Ordinance requiring a person applying for representation by a municipal public defender or court-approved counsel to pay an application fee.

- 1. The required application fee may be waived by the court, in whole or in part, if the court determines upon a showing of clear and convincing evidence that the fee represents an unreasonable burden on the applicant.
- 2. The municipal court may permit the applicant to pay the required application fee over a specific period of time not to exceed four months.

Appendix to Part VII Guidelines for Determination of Consequence of Magnitude (See Rule 7:3-2)

On October 6, 1997, the Supreme Court adopted the Comprehensive Revision of Part VII of the Rules of Court to be effective on February 1, 1998. R. 7:3-2 of that Comprehensive Revision provides for the assignment of counsel "[i]f the court is satisfied that the defendant is indigent and that the defendant faces a consequence of magnitude or is otherwise constitutionally or by law entitled to counsel...." The Supreme Court directed that guidelines for the determination of a consequence of magnitude be developed by the Supreme Court Municipal Court Practice Committee to assist municipal court judges in deciding what factors should be considered when determining a consequence of magnitude.

In response to this direction, the Supreme Court Municipal Court Practice Committee developed the following set of guidelines. The Supreme Court, as recommended by the Committee, has included the guidelines as an Appendix to the Part VII Rules.

In determining if an offense constitutes a consequence of magnitude in terms of municipal court sentencing, the judge should consider the following:

- **(1)** Any sentence of imprisonment;
- **(2)** Any period of (a) driver's license suspension, (b) suspension of the defendant's non-resident reciprocity privileges or (c) driver's license ineligibility; or
- **(3)** Any monetary sanction imposed by the court of \$800 or greater in the aggregate, except for any public defender application fee or any costs imposed by the court. A monetary sanction is defined as the aggregate of any type of court imposed financial obligation, including fines, restitution, penalties and/or assessments.

It should be noted that if a defendant is alleged to have a mental disease or defect, and the judge, after examination of the defendant on the record, agrees that the defendant may have a mental disease or defect, the judge shall appoint the municipal public defender to represent that defendant, if indigent, regardless of whether the defendant is facing a consequence of magnitude, if convicted.

Note: Guidelines adopted July 28, 2004 to be effective September 1, 2004; amended July 22, 2014 to be effective September 1, 2014.