

27.52. Determination of indigent status

(1) The clerk of the circuit court shall determine if a person applying for appointment of a public defender or private attorney or any other due process services is indigent using a form developed by the Supreme Court. If the defendant is incarcerated, the public defender shall obtain the information necessary for the clerk to make the determination of indigence. The clerk may contract with third parties to perform this function. This determination may be made at any stage of the proceedings. Before appointing the public defender or a private attorney, or providing any other court-related service based on indigent status, the court shall receive the determination of indigent status from the clerk. If the clerk has not made this determination at the time a person requests appointment of a public defender or private attorney or provision of any other due process services, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may appoint counsel or authorize the provision of any other due process services on an interim basis. The applicant may seek review of the clerk's determination denying indigent status in the court having jurisdiction over the matter at the next scheduled hearing. If the applicant seeks review of the clerk's determination, the court shall make a final determination.

(2)(a) Any person applying for appointment of a public defender or private attorney or any other due process services based on indigent status shall pay a \$40 application fee to the clerk of court for each affidavit filed, regardless of the number of required due process services requested in a case. The clerk of court must assist a person who appears before the clerk and requests assistance in completing the affidavit containing financial information and the clerk must notify the court if a person is unable to complete the affidavit after the clerk has

provided assistance. The duty of the clerk in determining indigence shall be limited to receiving the affidavit of indigence executed by the individual seeking the determination and comparing the information provided in the affidavit to the standard of indigence established by law. The determination of indigence shall be a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The application fee shall be paid at the time the financial affidavit is filed or within 7 days thereafter. If, in a criminal proceeding, the application fee is not paid prior to the disposition of the case, the clerk shall advise the sentencing judge of this fact and the court shall:

1. Assess the application fee as part of the sentence or as a condition of probation; or

2. Assess the application fee pursuant to s. 938.29.

(b) The applicant shall submit, except in the case of incapacity communicated through the public defender, a completed affidavit containing the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.

2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts.

3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

(3) After reviewing the affidavit and questioning the applicant, the clerk shall make one of the following determinations:

- (a) The applicant is indigent; or
- (b) The applicant is not indigent.

(4)(a) An applicant, including an applicant who is a minor or an adult tax- dependent person, is indigent if:

1. The income of the person is equal to or below 200 percent of the then- current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI); or

2. The person is unable to pay for the services of an attorney without substantial hardship to his or her family.

(b) In determining whether an applicant is indigent, the clerk shall determine whether any of the following facts exist, and the existence of any such fact creates a presumption that the applicant is not indigent:

1. The person has been released on bail in the amount of \$5,000 or more;

2. The person owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property; or

3. The person retained private counsel immediately before or after filing the affidavit asserting indigent status pursuant to subsection (2).

If the clerk finds discrepancies between the

financial affidavit and the investigation of assets, the clerk shall submit the information to the court and the court shall determine whether the public defender or private attorney shall continue representation, or whether the authorization for any other due process services previously authorized shall be revoked. The person may be heard regarding the information discovered by the clerk. If the court, based on the information provided, determines that the person is not indigent, the court shall order the public defender or private attorney to discontinue representation and revoke the provision of any other authorized due process services. Notwithstanding any provision of law, court rule, or administrative order to the contrary, the clerk of the court shall assign the first \$40 of any fees or costs paid by an indigent person as payment of the application fee. A person found to be indigent shall not be refused counsel or other required due process services for failure to pay the fee.

(5) All application fees shall be transferred monthly by the clerk of the court to the Department of Revenue for deposit to the Indigent Criminal Defense Trust Fund, administered by the Justice Administrative Commission, to be used to supplement the general revenue funds appropriated by the Legislature to the public defenders. The clerk of the court may retain 2 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue.

(6) A nonindigent parent or legal guardian of an applicant who is a minor or an adult tax-dependent person shall furnish the minor or adult tax-dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to chapter 985, a criminal prosecution, in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal

guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to s. 27.40 or s. 27.5303. When the public defender, a special assistant public defender appointed pursuant to s. 27.53(2), or a private attorney is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the nonindigent parents or legal guardian of the minor or adult tax-dependent person. The lien shall be enforceable as provided in s. 27.561 or s. 938.29.

(7) If the trial court determines that any applicant, through fraud or misrepresentation, was improperly determined to be indigent, the state attorney shall proceed against the applicant for the reasonable value of the services rendered, including all fees, charges, and costs paid by the state in his or her behalf. Twenty-five percent of any amount recovered by the state attorney shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission for appropriation by the Legislature to the state attorney. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.