

ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, upon consultation and with the approval of the Administrative Board of the Courts, I hereby promulgate a new section 205.19 of the Uniform Rules for the Family Court, effective immediately, to read as follows:

Uniform Rules for the Family Court

Section 205.19. Financial Eligibility for Publicly Funded Counsel.

A person entitled to publicly funded counsel pursuant to section 262 of the Family Court Act, section 407 of the Surrogate's Court Procedure Act or section 35(8) of the Judiciary Law shall be financially eligible for counsel when the person's current available resources are insufficient to pay for a qualified private attorney, the expenses necessary for effective representation, and the reasonable living expenses of the person and any dependents in the relevant jurisdiction. Counsel shall be provided unless the person is conclusively ineligible based upon the criteria in this section. The provisions of this section shall be applied uniformly, consistently, and with transparency.

(a) Timely access to counsel.

- 1). Counsel shall be provided at the first court appearance or immediately following the request for counsel, whichever is earlier. Eligibility determinations shall be made in a timely fashion so that representation by counsel is not delayed.
- 2). Counsel shall be provided to persons who have not obtained counsel prior to initiation of a proceeding which may result in detention, in removal of children from their care or where there is an unavoidable delay in the eligibility determination, subject to judicial approval once the court proceeding has begun. For timely access to counsel, a person seeking counsel

prior to the filing of a petition shall be provided with the contact information of the entity which has the primary responsibility in the jurisdiction for providing representation.

3). A parent or legally responsible person, as defined by law, shall be entitled to and provided with immediate representation by counsel: (i) upon the filing of a petition or pre-petition request under Article 10 of the Family Court Act for an order for immediate removal of a child or temporary order of protection; (ii) where the court has received notice of an extra-judicial emergency removal of a child; or (iii) upon the filing of a petition alleging abuse or neglect against the parent or person legally responsible. In accordance with this entitlement, counsel shall be provided sufficiently in advance of the person's first court appearance, and shall also be provided for parents during a child protective agency investigation, consistent with paragraph (2) of this subdivision.

(b) Presumptions of eligibility. The following presumptions of eligibility shall apply and are rebuttable only where there is compelling evidence that the person seeking counsel has the financial resources sufficient to pay for a qualified private attorney, the expenses necessary for effective representation in this and related proceedings, and the reasonable living expenses of the party and any dependents in the relevant jurisdiction:

- 1). The person's net income is at or below 250% of the Federal Poverty Guidelines, provided, however, that a person with an income in excess of 250% of the guidelines shall not be denied counsel if other criteria are met;
- 2). The person is incarcerated, detained, or confined to a mental health institution;
- 3). The person is currently receiving, or has recently been deemed eligible pending receipt of, need-based public assistance, including but not limited to Family Assistance (TANF), Safety Net Assistance (SNA), Supplemental Nutrition Assistance (SNAP), Supplemental

Security Income (SSI)/New York State Supplemental Program (SSP), Medicaid, or Public Housing assistance; or

4). The person has, within the past six months, been deemed financially eligible for counsel in another court proceeding in that jurisdiction or another jurisdiction.

(c) Additional considerations. The following factors shall be considered in determining a person's financial eligibility for publicly funded counsel:

1). Debts and other financial obligations, including the obligation to provide-reasonable living expenses of the person and his or her dependents in the relevant jurisdiction; and

2). The actual cost of retaining a private attorney in the relevant jurisdiction for the type of matter for which publicly funded counsel is sought.

(d) Exclusions from assets of an applicant seeking publicly funded counsel.

1). Non-liquid assets shall not be considered unless such assets have demonstrable monetary value and are readily convertible to cash without impairing the person's ability to provide for the reasonable living expenses of themselves and their dependents in the relevant jurisdiction. Ownership of a vehicle shall not be considered where such vehicle is necessary for basic life activities. The person's primary residence shall not be considered unless the fair market value of the home is significant, there is substantial equity in the home, and the person is able to access the equity in an amount and within a time-frame sufficient to retain private counsel promptly.

2). Any income from receipt of child support or need-based public assistance shall not be considered in determining eligibility for publicly funded counsel.

3). Third-party resources. The resources of a third party shall not be considered available to the person seeking publicly funded counsel unless the third party expressly states a present intention to pay for counsel, the person seeking counsel gives informed consent to this arrangement, and the arrangement does not interfere with the person's representation or jeopardize the confidentiality of the attorney-client relationship. Neither the resources of a spouse nor the resources of a parent of a person seeking publicly funded counsel shall be considered, except as provided in this subdivision.

(e) Process for determining eligibility.

1). Each judicial district shall establish a process for determining eligibility in accordance with this rule and which utilizes a screening tool promulgated and approved by the Chief Administrative Judge. The court has the ultimate authority to determine eligibility but may delegate the responsibility for screening and making an eligibility recommendation to entities that are independent and conflict-free, including, but not limited to, entities providing representation.

2). The eligibility process, including the documentation required to be submitted, shall not be unduly burdensome for the person seeking publicly funded counsel. Counsel shall not be denied where the person has made a good faith, but unsuccessful, effort to produce required documentation or has made minor inadvertent or technical errors. Nor shall a person be required to demonstrate an unsuccessful effort to retain private counsel to be deemed financially eligible for publicly funded counsel.

3). The court or delegated screening entity shall preserve the confidentiality of the information presented as part of the financial eligibility determination and shall take steps to ensure that the screening and determination are done in a confidential setting and that information identifying the person seeking counsel is not accessible to the public or other parties, except as otherwise provided by the court.

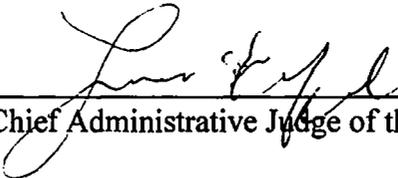
(f) Reconsideration and review of a denial of publicly funded counsel or expenses.

1). A determination denying counsel by either the court or delegated screening entity or a determination by the court denying expenses under section 722-c of the County Law shall be in writing, shall include reasons for the denial and procedure for seeking reconsideration, and shall be provided to the person seeking counsel or expenses.

2). In addition to a procedure for seeking prompt reconsideration from the court or delegated screening entity, each judicial district shall establish a procedure for prompt supervisory administrative review upon request by a person who has been denied publicly funded counsel under section 722-b of the County Law or expenses under section 722-c of the County Law or for whom an order for payment under section 722-d of the County Law has been issued. These procedures shall be in writing, shall be posted on the judiciary's public website and in each courthouse, and shall be furnished to any person who has been denied publicly funded counsel or expenses or who has been issued an order directing payment under sections 722-b, 722-c or 722-d of the County Law, respectively.

g) Nothing in this rule shall impair or prevent a party from seeking or obtaining an award of counsel fees and expenses as a non-monied spouse, former spouse or parent for counsel of their choice pursuant to section 438 of the Family Court Act or section 237 of the Domestic Relations

Law, instead and in place of publicly funded counsel pursuant to section 262 of the Family Court Act or section 35(8) of the Judiciary Law.

  
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Chief Administrative Judge of the Courts

Dated: September 28, 2022

AO/220/2022