

Guidelines to Determine Eligibility for Indigent Defense Services

I. Introduction

II. Right to Counsel

- A. Circumstances in which there is a right to counsel**
- B. Circumstances in which there is no right to counsel**

III. Determining Indigency

A. Application Process

- 1. When to apply/re-apply?**
- 2. Who should apply?**
- 3. Application Fee**
- 4. Review of the Application**
 - a) Who may review the application?**
 - b) Sufficiency of information**
 - c) Decision on the application**

B. Determining Eligibility

- 1. General Guidelines**
- 2. Automatic qualification for indigent defense services**
- 3. Factors to be considered in determining eligibility when the applicant is not automatically qualified**
 - a) Income Resources**
 - 1) Sources of income resources**
 - 2) Determining who is legally responsible for applicant**
 - 3) Determining Household Size**
 - b) Non-Income Resources**
 - c) Exceptional Factors**

C. Denial of Eligibility

IV. Assignment Process

- A. Assignment of Counsel**
- B. Notification of Assignment of Counsel**

V. Review of a determination that applicant is eligible for ID services

VI. Substitution of Appointed Counsel

VII. Complaint Procedure

VIII. Assessment and Collection of Fees for Indigent Defense Services

Appendix A - Application Forms

Appendix B - What constitutes a “Case Assignment”?

Appendix C - Sample Notice of Inadequate Information

Appendix D - Income Guidelines 2009

Appendix E - Sample Denial Form

Appendix F - Sample Order Upon Judge’s Review

Appendix G - Complaint Procedure

Appendix H - Presumed Rate for Attorney Fee Reimbursement

Guidelines to Determine Eligibility for Indigent Defense Services

I. Introduction

The ND Commission on Legal Counsel for Indigents provides indigent defense services in those matters in which a person has a constitutional, statutory, or rule based right to counsel, if the person is “indigent.” Thus, the type of case must be one in which the party has a right to counsel, and the party must be indigent. If one of these conditions is not met, indigent defense services are not provided by the Commission.

II. Right to Counsel

A. Circumstances in which there is a right to counsel provided by the Commission

Parties may apply for indigent defense services to be provided by the ND Commission on Legal Counsel for Indigents when they have a “right to counsel.” A party has a right to counsel provided by the Commission, under the following circumstances:

Defendant charged with a felony in District Court (N.D.R. Crim. P. 44 (a) (1)).

Defendant charged with a Class A or Class B Misdemeanor in District Court, unless the Court has determined that there is no possibility of imprisonment, including a suspended sentence of imprisonment or a deferred imposition of sentence (N.D.R. Crim. P. 44 (a) (2)), but not a matter transferred from or on appeal from Municipal Court.

Parent, legal guardian, or custodian, in the dispositional stage of any juvenile proceedings regarding allegations of unruliness or delinquency (NDCC § 27-20-26 (1)). A parent, legal guardian, or custodian does not have a right to an attorney in the adjudicatory state of a juvenile proceeding regarding allegations of unruliness or delinquency.

Parent, legal guardian, or custodian, in a deprivation matter under the Uniform Juvenile Court Act (NDCC § 27-20-26 (1)).

Child in any juvenile case, at custodial, post-petition, and informal adjustment stages (NDCC § 27-20-26 (1)).

Parent in a termination of parental rights proceeding under NDCC Ch. 27-20.

Parent in a termination of parental rights proceeding under NDCC Ch. 14-15, except for a parent who consents to termination of parental rights for a child

being placed for adoption by a licensed child placing agency. For services to be provided by the Commission to such parent, the court must first have ordered the state's attorney to serve as legal counsel for the parent, and then found that the state's attorney has shown a conflict exists in representing the parent.

Parties in a guardianship action brought under the Uniform Juvenile Court Act (NDCC § 27-20-26).

Interstate Compact on Juvenile matters when required pursuant to NDCC § 27-22-02.

Juvenile in an abortion proceeding brought under NDCC Ch. 14-02.1.

Respondent in a child support enforcement action (Order to Show Cause or arrest on warrant) - but only if a judicial determination has been made that jail is a likely sanction, and only as to the "contempt" portion of the case.

Respondent in a civil contempt proceeding under NDCC Ch. 27-10, but only if a judicial determination has been made that jail is a likely sanction.

Respondent in confinement proceedings for those with communicable diseases brought under NDCC Ch. 23-07.6.

Petitioner suspected of having human immunodeficiency virus requesting review of a Protective Order issued under NDCC Ch. 23-07.4 (NOTE: The right to counsel is only for review of an order issued by the State Health Officer, and is not available at the administrative agency stage).

Developmentally disabled respondent in a hearing for psycho surgery under NDCC Ch. 25-01.2.

Defendant in an extradition proceeding (NDCC Ch. 29-30.3 and Ch. 29-06.1).

Petitioner in a pending Uniform Post Conviction Act proceeding brought under NDCC Ch. 29-32.1.

Proceedings under NDCC § 12.1-04.1-20 through § 12.1-04.1-25 regarding an individual found not guilty of a charge by reason of lack of criminal responsibility.

Upon appeal of any case in the categories listed above.

B. Circumstances in which there is no right to counsel provided by the Commission

Defendant charged with a Class A or Class B Misdemeanor in District Court, where the Court has determined that there is no possibility of imprisonment, including no possibility under a suspended sentence of imprisonment or a deferred imposition of sentence.

Municipal court misdemeanors transferred to District Court (NDCC § 40-18-15.1; id. § 29-07-01.1 (1)).

Defendant's appeal of a Municipal court matter to District Court (NDCC § 40-18-19); id. § 29-07-01.1 (1)).

Defendant charged with the violation of a home rule county ordinance (NDCC § 11-09.1-14; id. § 29-07-01.1 (1)).

Defendant charged with an infraction (NDCC § 12.1-32-03.1).

Parent, legal guardian, or custodian in the adjudicatory state of a juvenile proceeding regarding allegations of unruliness or delinquency (NDCC § 27-20-26 (1)).

Respondent in a mental health civil commitment matter (NDCC §§ 25-03.1-09 (2), 25-03.1-13 (4), 25-03.1-26, 25-03.1-31).

Respondent in a sex offender civil commitment matter (NDCC § 25-03.3-09 (3)).

Defendant or Respondent in a forfeiture matter.

Defendant's Rule 35 Motion to Reduce Sentence brought after the expiration of the time to appeal, or if an appeal was filed, brought after the dismissal of the appeal or the Supreme Court's mandate in the appeal.

Petitioner in a habeas corpus matter under NDCC Ch. 32-22.

III. Determining Indigency

A. Application Process

A party seeking indigent defense services has the burden of showing that he or she qualifies for indigent defense services. Services will not be provided unless a properly

completed application is submitted, and a finding made by the court that the party qualifies for services.

Applications for appointed counsel shall be made on the standard application form provided by the Commission. See Appendix A (application forms for criminal, juvenile, and civil matters).

Only those cases for which an attorney can be provided by the Commission should be listed on the application.

1. When to apply/re-apply?

A party seeking indigent defense services must apply for services for each “case assignment.” See Appendix B (What constitutes a “Case Assignment”). If a party is applying at one time for services on multiple case assignments, a single application may be submitted, but it is important to note all of the court file numbers on the application.

Indigent defense services are only provided for the duration of a “case assignment.” Once that case assignment terminates, services are no longer provided, even though the court file may still be an open file. If the “case assignment” has terminated, and the party wants indigent defense services in the matter, such as for a later hearing, the party must re-apply for services.

An exception is for a direct appeal of a criminal matter or a post-conviction matter. The defendant does not need to reapply for services for a timely direct appeal of a criminal conviction or a timely appeal of the denial of a petition for post-conviction relief, if the defendant had an attorney provided by the Commission for the underlying criminal or post-conviction case.

A party who wishes to appeal from an order terminating parental rights should apply for indigent defense services for the appeal, prior to filing the notice of appeal.

2. Who should apply?

Generally, the party seeking indigent defense services must complete the application.

However, in a matter under the Uniform Juvenile Court Act, a child under the age of 18, is not considered indigent if the child’s parent can provide for full payment of legal services. (NDCC § 27-20-26 (2)). Therefore, if counsel is sought for a child under the age of 18 in a Uniform Juvenile Court Act matter, the parent(s) should complete the application. If the parent(s) refuse to complete the application, the court should order the parent(s) to do so. If the parent does not do so, or is absent from the jurisdiction, the child can fill out the application with the parent’s information to the best of the child’s

ability. The person who is responsible for reviewing the applications should then write on the application that the parent refused to complete the application or that the parent is absent from the jurisdiction.

In a matter under the Uniform Juvenile Court Act, where counsel is sought for a “child” under the age of 20 for a delinquent act committed when the child was under the age of 18, the child should complete an application for indigent defense services. The child should use the application captioned “For an Adult in a Juvenile Case.” This is the same form that a parent who is seeking an attorney for him/herself in a juvenile matter would use.

3. Application Fee

Pursuant to NDCC 29-07-01.1, there is a \$25 application fee which is due at the time an application is filed in a criminal case, in District Court. There is no statutory authority to charge the \$25 application fee for any other type of case.

This fee may be waived or reduced if the applicant cannot afford to pay it. If the fee is not waived, and had not been paid when the application was submitted, the amount is added to any costs that are ordered to be reimbursed at the conclusion of the case.

An application cannot be rejected because the fee is not paid at the time it is filed.

4. Review of the Application

a) Who may review the application?

Review of applications for indigent defense services in criminal, civil, or family cases may be done by a judge, or delegated by the judge to a referee, or staff in the clerk of court office or district administration staff. Review of applications for indigent defense services in juvenile cases may be done by a judge, or delegated by the judge to a referee, staff in the juvenile court or district administration staff.

Review of applications should be delegated only to those persons who have been provided appropriate training on (a) the circumstances under which a party is entitled to appointed counsel, (b) the circumstances under which additional information is required before determining eligibility, and (c) application of the financial guidelines for eligibility.

b) Sufficiency of information

All applications received are to be reviewed for adequacy of information. Applications with missing information shall be promptly returned to the applicant, along with a clear explanation of what additional information is need. See Appendix C (Sample notice of inadequate information).

c) Decision on the application

A decision on an application must be made within 48 hours of filing and the applicant promptly notified of the results. If the decision is that the applicant is eligible, notice shall be given immediately to the Commission or lead firm, as indicated in Section IV Assignment of Counsel, so that counsel may be promptly assigned.

B. Determining Eligibility

1. General Guidelines

- a) Close questions regarding an applicant's indigency should be resolved in favor of eligibility. This will assist case processing, protect constitutional rights, and will be balanced by more active recoupment procedures.
- b) Early appointment of counsel is desirable, for the parties, the attorneys, and the court. Therefore, it is important that a prompt determination be made as to whether the applicant qualifies for indigent services.
- c) The eligibility determinations for indigent defense services based on financial resources should not impose an extensive time burden on court officials.
- d) The applicant should be reminded of the penalties for giving false information in the eligibility determination process.
- e) Early in the proceedings, the applicant must be notified by the judge presiding in the case and by indigent defense counsel that the applicant may be subject to recoupment for the fees and expenses of counsel.
- f) Any indication of anticipatory transfer of assets by defendant to create the conditions for eligibility for defense services should be scrutinized and dealt with decisively.

g) The judge may wish to inquire periodically throughout the proceedings regarding substantial changes in the applicant's financial status. However, this information should not be permitted to disrupt the flow of court proceedings, but should be considered in the recoupment process at the end of the court proceedings.

2. Automatic qualification for indigent defense services

Eligibility for TANF (Temporary Aid to Needy Families), SSI (Supplemental Security Income, not Social Security benefits), and Medical Assistance for the Elderly, is determined based on poverty threshold guidelines, and include asset limitations. If an applicant is receiving any of these governmental benefits, he or she also qualifies for a indigent defense services. (See the applications for "Fast Track" determination.)

3. Factors to be considered in determining eligibility when the applicant is not automatically qualified

When determining whether a party is eligible for indigent defense services, consideration should be given to all of the following factors:

- a) income resources;
- b) non-income resources; and
- c) exceptional factors such as extraordinary financial conditions that would prevent the applicant from hiring an attorney

a) Income Resources

The financial guidelines used to assess indigency are set at 125% of the federal poverty level. The United States Department of Health and Human Services makes an annual determination of the poverty level threshold. These guidelines are updated annually in April. Every office should have a form with the most current guidelines; this form is captioned "Income Guidelines." The 2009 Income Guidelines are attached to this document as Appendix D. The most current form may be obtained from the office of the Executive Director of the Commission, or on the Commission's website.

Applicants with income resources in excess of 125% of the federal poverty level, as indicated on the current version of the "Income Guidelines," will generally not qualify for indigent defense services. However, such applicant should not be automatically denied services, consideration should be given to the exceptional factors in Section III (B) (3) ©, on page 10.

To determine income resources, the person reviewing the application must determine the applicant's total income resources and the applicant's household size.

The applicant's income resources include total cash receipts before taxes of the applicant and those persons who are legally responsible for the applicant.

1) Sources of income resources

Income resources include the value of any of the following:

- a. money, wages and salaries before any deductions;
- b. income from self-employment after deductions for business or farm expenses;
- c. regular payments from social security, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household, or foster care payments;
- d. public or private employee pensions, and regular insurance or annuity payments;
- e. income from dividends, interest, rents, royalties, estates or trusts;
- f. benefits from a governmental income maintenance program (unemployment compensation, or state or county general assistance or home relief);
- g. food or rent received in lieu of wages;
- h. money which is received from sale of real or personal property, or received from tax refunds, gifts, one-time insurance payments or compensation for injury;
- i. non-cash benefits (Food Stamps, etc.); and
- j. payments from rental of Indian Trust Land and Tribal per capita payments authorized by the Indian Claims Commission.

Bail funds should not be included in determining defendant's income.

Some applicants will only know their net income. Gross income may be imputed by adding a 27% estimated tax withholding.

2) Determining who is legally responsible for the applicant:

A husband and wife have a mutual duty of support (NDCC § 14-07-03). Therefore, the spouse's income and assets should be considered when determining whether the applicant qualifies for indigent defense services. If there is some reason in a specific case why the spouse's income or assets should not be considered, the applicant should indicate this on the application form, and give a detailed explanation. (An

example of an exception to the general rule might be a situation where a husband and wife keep their income, assets, and liabilities totally separate from each other.)

A natural parent or adoptive parent is legally responsible for an applicant who is under the age of 18.

Indigency of a child under the age of 18 in a matter brought under NDCC Ch. 27-20 should be determined by the financial status of the parents. NDCC § 27-20-26 (2).

A step-parent, guardian, or parent whose rights have been terminated is not legally responsible for an applicant who is under the age of 18.

Parents or other relatives who provide housing or other care for an applicant who is over the age of 18 generally will have no legal responsibility for the applicant.

Eligibility for services for an adult under guardianship is based upon the resources of the applicant, not the resources of the guardian.

3) Determining Household Size

All individuals who are actually dependent on the applicant for financial support should constitute a single household for purposes of assessing income levels for eligibility for indigent defense services.

A spouse and children who are the legal responsibility of the applicant are included as members of a single household. Adult children, step-children, grandchildren, parents, other relatives, and non-related persons who reside in the household will generally not be considered the legal responsibility of the applicant and should not be counted as part of the household for purposes of determining eligibility. However, in exceptional circumstances, such persons can be considered as part of the "household" (such as when the applicant's grandchildren live with the applicant, but the parent of the children is absent and not supporting the children).

If the applicant has indicated that the spouse's income and assets should not be considered for some specified reason, the spouse should not be included in the members of the household.

b) Non-Income Resources

These guidelines for non-income financial resource levels are offered as resource levels at or below which eligibility for defense services should be considered. If the applicant and those persons who are legally responsible for the applicant have non-income resources above these levels, the applicant will generally not qualify for indigent defense services. However, such applicant should not be automatically denied services;

consideration should be given to any exceptional financial conditions which would prevent the applicant from hiring an attorney, and the estimated cost of defense services.

Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.

Indian Trust Land should not be considered when assessing non-income resources (Note: title to Indian Trust Lands is held by the federal government).

Personal property used to generate income, such as tools necessary for employment, should not be considered if it cannot be sold or encumbered without unnecessary hardship.

c) Exceptional Factors (Factors to consider that may justify a finding that an applicant is eligible for indigent defense services, even though the applicant otherwise does not meet the eligibility criteria.)

An applicant whose income resources or non-income resources exceed these guidelines may still be eligible to receive indigent defense services based on the following factors:

- a. Current income prospects, taking into account seasonal variations in income;
- b. Age or physical infirmity of household members;
- c. Outstanding and extraordinary medical bills or other necessary expenses which the applicant is paying for the applicant or for persons for whom the applicant is legally responsible;
- d. The liquidity or non-liquidity of the applicant's non-income resources;
- e. The estimated cost of obtaining private legal representation and other defense costs with respect to the particular matter for which assistance is sought;
- f. The nature of the criminal charge; and
- g. The anticipated complexity of the defense.

C. Denial of Eligibility

A notification will be promptly sent to an applicant who is found to be ineligible for indigent defense services.

If the determination was made by someone other than a district court judge, the notification must contain a statement that the determination of ineligibility was an

administrative decision based on information provided in the application. It must include a notice to the applicant that he or she has the right to request that a district court judge review the decision to deny indigent defense services. The notification must contain language indicating that the applicant must specify the grounds for the request and provide any additional information necessary for the judge to make a determination on the merits. See Appendix E (sample denial form); Appendix F (sample Order Upon Judge's Review of Finding of Ineligibility for Indigent Defense Services).

A criminal defendant is not required to submit an additional fee to have the district court judge review the decision to deny indigent defense services. Similarly, if the defendant's circumstances change and he/she reapplies for services in a case assignment in which services were previously denied, no additional fee is required.

IV. Assignment Process

A. Assignment of Counsel

Assignment of counsel is the responsibility of the Commission or a designee of the Commission.

In those districts where the Commission has opened a public defender office which serves as "lead firm" or has contracted with a lead firm, the court shall fax the Notice of Eligibility for Appointed Counsel to the lead firm for assignment of counsel.

In those districts where there is no lead firm, the court shall fax the Notice of Eligibility for Appointed Counsel to the Office of the Executive Director of the Commission for assignment of counsel.

A unit administrator may enter into an agreement with the Commission to allow clerk staff to assign counsel based on an assignment schedule provided by the Executive Director of the Commission.

Assignment of conflict counsel is the responsibility of the Commission and will be handled by the Commission, by a public defender office, or by the lead firm, where one is available.

B. Notification of Assignment of Counsel

Notification to the applicant of assignment of counsel is the responsibility of the Commission or its designee.

Procedures already in place in each office for assigned counsel to obtain copies of files shall continue.

V. Review of a determination that applicant is eligible for indigent defense services

It is in the interest of all parties, the court, and the public, to insure that indigent defense services are provided in appropriate cases. However, there are abuses to the system, both intentional and unintentional. Applicants are not always forthcoming with their income information, and do not always inform the court of changes which would effect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly indigent.

It is not unusual that the timelines are such that counsel must be provided immediately upon application, without the opportunity to double check questionable information. Therefore, if it appears from the information submitted in the application that the applicant does qualify for services, services should be provided prior to any additional screening process to as to not cause a delay in the case.

Additional screening of applications will be conducted in the following instances:

- a. Applications filed by an adult that indicate no income (unless the applicant is incarcerated in the State Penitentiary);
- b. Applications that are substantially different from a prior application which was used to determine that the applicant was ineligible for indigent defense services;
- c. Upon the request of the state's attorney or the Commission;
- d. Upon receipt of information from any member of the public purporting to show that the applicant is not indigent;
- e. As prescribed by a random screening program adopted by the judicial district or by the Office of the State Court Administrator, and
- f. Sua sponte by the judge.

Further screening requires the applicant to meet with a representative of the court and bring with them a current bank statements and a copy of the prior year's income tax return.

At the meeting the court shall make inquiry as to past employment, and current status of unemployment compensation, workers compensation, disability payments, welfare benefits, and other sources of support, including inquiry regarding current household arrangements. Whenever possible, the meeting shall be done privately. The screener must note the results of the meeting and attach them to the application.

If after screening, the screener determines that the applicant does not appear to be eligible for indigent defense services, the screener shall send a written notification to the applicant of the determination and the basis for the determination. A copy of the notification shall be sent to the defense attorney, and the Commission.

Upon receipt of the notification, the defense attorney, after consultation with the Commission, may elect to file a motion to withdraw as counsel. The decision to terminate or continue indigent defense services for the applicant rests with the judge assigned to the case.

VI. Substitution of Appointed Counsel

Prior to any appearance by the attorney in a case, a substitution of counsel may be made by the lead firm or the Commission upon notification by assigned counsel of a conflict of interest.

If counsel discovers a conflict of interest after he or she has made an appearance on the case, counsel must file a Motion to Withdraw as Counsel.

The motion must be served upon any opposing counsel and the defendant. A hearing on the motion is not required unless an objection is filed.

VII. Complaint Procedure

Court staff receiving complaints regarding an indigent defense attorney's responsiveness to clients or the court, or their effectiveness in representing clients, or their ability to establish a working relationship with clients, must provide the complainant with a copy of the Commission's form: "Complaint Procedure." See Appendix G (complaint form). This same form should be given to an applicant who is requesting assignment of a different attorney.

This procedure requires that the applicant put the complaint in writing before the Commission will respond to it.

Judicial concerns related to the performance of counsel should be referred to the Office of the Executive Director of the Commission.

VIII. Assessment and Collection of Fees for Indigent Defense Services

Recoupment of indigent defense costs and expenses is authorized by statute in criminal matters, post-judgment proceedings, and juvenile matters. NDCC § 12.1-32-08; id. § 27-20-49; id. § 29-07-01.1; id. § 29-32.1-05. In juvenile matters, the parents are responsible for the attorneys fees and expenses for a child under the age of 18. If the child is aged 18 or older, the child is responsible for his/her own attorney fees and expenses.

Unless the Court finds that there is no likelihood that the indigent party is or will be able to pay attorney's fees and expenses, the court, in its judgment or conviction, order following a revocation or other post-conviction proceeding, or order or judgment following a hearing under chapter 27-20, shall order the party to reimburse the presumed amount of indigent defense costs and expenses, and notify the party of the right to a hearing. See Appendix H for presumed amounts.

If the party or the state requests a hearing, the Court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. Following this hearing, the court determines the amount of reimbursement, and the method of payment, considering the financial resources of the party and the nature of the burden that reimbursement will impose.

Version June 3, 2009

APPENDIX A
Application Forms

**REFERENCE LIST IDENTIFYING REDACTED INFORMATION
CONFIDENTIAL - FILED UNDER SEAL**

Case Number(s): _____

**APPLICATION FOR INDIGENT DEFENSE SERVICES
CRIMINAL CASES**

Please Print All Information

Defendant's Full Name: _____

Defendant's Date of Birth: _____

Defendant's Mailing Address: _____

Street Address (if different): _____

From Part E of the Application:

The full names of any minors listed as people living in your household:

- | | |
|----------|----------|
| 1. _____ | 3. _____ |
| 2. _____ | 4. _____ |

The full names of any minors listed as other dependants or others you support financially:

1. _____
2. _____

Date: _____

Signature

**APPLICATION FOR INDIGENT DEFENSE SERVICES
CRIMINAL CASES**

REQUIRED FEE: You must pay a \$25 fee when submitting this application. The Court may waive or reduce the fee if you cannot pay the entire fee. If the fee is not waived and you do not pay the fee, the amount will be added to any costs you are ordered to reimburse at the conclusion of your case.

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

DEFENDANT'S NAME: _____

CRIMINAL CHARGE(S): _____

CASE NUMBER(S): _____

AMOUNT PAID FOR BOND: \$ _____

Please Print All Information

PART A
What is your full name (include any aliases)? _____
Home phone number: _____ Work: _____ Cell: _____
City and State of Home Address: _____
Year of birth: _____
Have you ever had an appointed lawyer? YES _____ NO _____
If yes, who was your attorney? _____
If yes, when and in what county/state? _____

PART B
Do you receive any of the following governmental benefits:
TANF: YES _____ NO _____ Medical Assistance for the Elderly: YES _____ NO _____
Supplemental Security Income: YES _____ NO _____
If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, skip parts C, D, and E and go to Part F.
If you answered no to receiving TANF, Supplemental Security Income, AND Medical Assistance for the Elderly, complete the entire application in order for your eligibility for indigent defense services to be determined.

PART C

Are you employed? YES _____ NO _____
 If yes, print your employer's name, telephone number and address: _____

What type of work do you do? _____
 Is your job waiting for you? YES _____ NO _____ NOT SURE _____
 What is your supervisor's name? _____

Is your spouse employed? YES _____ NO _____ NOT MARRIED _____

Your Monthly income before taxes \$ _____	Cash on Hand \$ _____
Spouse's monthly income before taxes \$ _____	Bank Accounts \$ _____
Governmental/Public Assistance: \$ _____	Tax refund coming \$ _____
Unemployment \$ _____	Stocks/Bonds \$ _____
Pension \$ _____	Land/Real Estate \$ _____
VA Disability \$ _____	Value of Home/Mobile Home \$ _____
Military Allotment \$ _____	Value of Vehicles \$ _____
Spousal/Child support \$ _____	Livestock \$ _____
Other Income \$ _____	Household Goods \$ _____
Total Monthly Income \$ _____	Total Assets \$ _____

PART D

If you own or are buying property listed below, circle the item and then fill in the information about the property.

Property:	What is the make/model & year	Cost when you bought it	Present Value	How much do you still owe on it?
Car				
Second Car				
Pickup				
Truck				
Motorcycle				
Recreational Vehicle				
House / Mobile Home				
Other Real Estate				
Other Property: _____				
Other Property: _____				

PART E

Names of People living in your household (do not provide full name of minors, use only initials):

	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Names, ages, and relationship of other dependents or others you support financially (do not provide full name of minors, use only initials):

1. _____
2. _____

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

YES _____ NO _____ If yes, please explain: _____

PART F

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that the information supplied on this form is not confidential, and that the accompanying reference list identifying redacted information will be provided to my attorney and to the ND Commission on Legal Counsel for Indigents. I also understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction.

If counsel is appointed for me, I understand that I have a continuing responsibility to inform the court of any changes in my financial condition. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for me at this time, I may be required to pay back those expenses to the State at a later time.

Date: _____ Signature _____

FOR COURT USE ONLY

Case Title(s): _____

Application Fee: Paid _____ Reduced to \$ _____ Waived _____ Due _____

Applicant is found to be:

_____ Not Indigent. The Application for appointed defense services is denied.

_____ Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents. The Court hereby advises the defendant of the defendant's potential obligation to reimburse the Commission the amounts expended on behalf of the defendant.

Date: _____ Approved: _____

Judge of District Court or Designee

**APPLICATION FOR INDIGENT DEFENSE SERVICES
FOR A MINOR CHILD IN A JUVENILE CASE**

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

TITLE OF CASE: _____

NAME OF CHILD FOR WHOM SERVICES ARE SOUGHT: _____

CASE NUMBER(S): _____

TYPE OF CASE: Informal Adjustment Unruly Delinquency
(Circle all that apply) Deprivation TPR Other

Please Print All Information

PART A

This application is regarding the income/assets of _____
(name of parent or parents of child for whom services are sought)

If parents are married to each other, they may submit one application together, or each may submit a separate application.

Is there another parent other than that listed in the question above? YES _____ NO _____
If yes, name of other parent: _____

Name of person completing application: _____

Parent's home phone number: _____
Work: _____ Cell: _____

Parent's full mailing address: _____
Street Address (if different): _____

Parent(s)' Date(s) of Birth: _____

Has parent ever had an appointed lawyer? YES _____ NO _____
If yes, who was the attorney? _____

PART B

Does the parent receive any of the following governmental benefits:

TANF: YES _____ NO _____ Medical Assistance for the Elderly: YES _____ NO _____

Supplemental Security Income: YES _____ NO _____

If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, skip parts C, D, and E and go to Part F.

If you answered no to receiving TANF, Supplemental Security Income, AND Medical Assistance for the Elderly, complete the entire application in order for the child's eligibility for indigent defense services to be determined.

PART C

Is the parent employed? YES _____ NO _____
 If yes, print employer's name, telephone number and address: _____

What type of work? _____
 What is the supervisor's name? _____
 Name of spouse of parent: _____
 Is spouse employed? YES _____ NO _____ NOT MARRIED _____

Parent's monthly income		Cash on Hand	\$ _____
before taxes	\$ _____	Bank Accounts	\$ _____
Other parent's monthly income		Tax refund coming	\$ _____
before taxes	\$ _____	Stocks/Bonds	\$ _____
Spouse's monthly income		Land/Real Estate	\$ _____
before taxes	\$ _____		
Governmental/Public Assistance:	\$ _____	Value of Home/Mobile Home	\$ _____
Unemployment	\$ _____	Value of Vehicles	\$ _____
Pension	\$ _____		
		Livestock	\$ _____
VA Disability	\$ _____		
Military Allotment	\$ _____	Household Goods	\$ _____
Spousal/Child support	\$ _____		
Other Income	\$ _____	Other Assets	\$ _____
Total Monthly Income	\$ _____	Total Assets	\$ _____

PART D

If the parent owns or is buying property listed below, circle the item and then fill in the information about the property.

Property:	What is the make/model & year	Cost when you bought it	Present Value	How much do you still owe on it?
Car				
Second Car				
Pickup				
Truck				
Motorcycle				
Recreational Vehicle				
House / Mobile Home				
Other Real Estate				
Other Property: _____				
Other Property: _____				

PART E

Names of people living in parent's household:

	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Names, ages, and relationship of other dependents or others parent supports financially:

1. _____
2. _____

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

YES _____ NO _____ If yes, please explain: _____

PART F

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent the child. I understand that the information supplied on this form is not confidential, and will be provided to my attorney and to the ND Commission on Legal Counsel for Indigents. I also understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction.

If counsel is appointed for the child, I understand that I have a continuing responsibility to inform the court of any changes in the parent(s)' financial condition. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for the child at this time, I may be required to pay back those expenses to the State at a later time.

Date: _____

Signature _____

FOR COURT USE ONLY

Case Title(s): _____

Applicant/parent is found to be:

_____ Not Indigent. The Application for appointed defense services is denied.

_____ Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents for the minor child _____
(Name of minor child)

Date: _____ Approved: _____

Judge of District Court or Designee

**APPLICATION FOR INDIGENT DEFENSE SERVICES
FOR AN ADULT IN A JUVENILE CASE**

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

TITLE OF CASE: _____

PERSON FOR WHOM SERVICES ARE SOUGHT: _____

CASE NUMBER(S): _____

TYPE OF CASE: Informal Adjustment Unruly Delinquency
(Circle all that apply) Deprivation TPR Other

Please Print All Information

PART A
What is your full name (include any aliases)? _____
Home phone number: _____ Work: _____ Cell: _____
Full Mailing Address: _____
Street Address (if different): _____
Date of Birth: _____
Have you ever had an appointed lawyer? YES _____ NO _____
If yes, who was your attorney? _____
If yes, when and in what county/state? _____

PART B
Do you receive any of the following governmental benefits:
TANF: YES _____ NO _____ Medical Assistance for the Elderly: YES _____ NO _____
Supplemental Security Income: YES _____ NO _____
If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, skip parts C, D, and E and go to Part F.
If you answered no to receiving TANF, Supplemental Security Income, AND Medical Assistance for the Elderly, complete the entire application in order for your eligibility for indigent defense services to be determined.

PART C

Are you employed? YES _____ NO _____
 If yes, print your employer's name, telephone number and address: _____

What type of work do you do? _____

What is your supervisor's name? _____

Is your spouse employed? YES _____ NO _____ NOT MARRIED _____

Your Monthly income before taxes \$ _____	Cash on Hand \$ _____
	Bank Accounts \$ _____
Spouse's monthly income before taxes \$ _____	Tax refund coming \$ _____
Governmental/Public Assistance: \$ _____	Stocks/Bonds \$ _____
	Land/Real Estate \$ _____
Unemployment \$ _____	Value of Home/Mobile Home \$ _____
	Value of Vehicles \$ _____
Pension \$ _____	
	Livestock \$ _____
VA Disability \$ _____	
Military Allotment \$ _____	Household Goods \$ _____
Spousal/Child support \$ _____	
Other Income \$ _____	Other Assets \$ _____
Total Monthly Income \$ _____	Total Assets \$ _____

PART D

If you own or are buying property listed below, circle the item and then fill in the information about the property.

Property:	What is the make/model & year	Cost when you bought it	Present Value	How much do you still owe on it?
Car				
Second Car				
Pickup				
Truck				
Motorcycle				
Recreational Vehicle				
House / Mobile Home				
Other Real Estate				
Other Property: _____				
Other Property: _____				

PART E

Names of people living in your household):

	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Names, ages, and relationship of other dependents or others you support financially:

1. _____
2. _____

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

YES _____ NO _____ If yes, please explain: _____

PART F

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that the information supplied on this form is not confidential, and will be provided to my attorney and to the ND Commission on Legal Counsel for Indigents. I also understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction.

If counsel is appointed for me, I understand that I have a continuing responsibility to inform the court of any changes in my financial condition. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for me at this time, I may be required to pay back those expenses to the State at a later time.

Date: _____

Signature _____

FOR COURT USE ONLY

Case Title(s): _____

Applicant is found to be:

_____ Not Indigent. The Application for appointed defense services is denied.

_____ Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents.

Date: _____ Approved: _____

Judge of District Court or Designee

**REFERENCE LIST IDENTIFYING REDACTED INFORMATION
CONFIDENTIAL - FILED UNDER SEAL**

Case Number(s): _____

**APPLICATION FOR INDIGENT DEFENSE SERVICES
CIVIL CASES**

Please Print All Information

Applicant's Full Name: _____

Applicant's Date of Birth: _____

Applicant's Mailing Address: _____

Street Address (if different): _____

From Part E of the Application:

The full names of any minors listed as people living in your household:

- | | |
|----------|----------|
| 1. _____ | 3. _____ |
| 2. _____ | 4. _____ |

The full names of any minors listed as other dependants or others you support financially:

1. _____
2. _____

Date: _____

Signature _____

**APPLICATION FOR INDIGENT DEFENSE SERVICES
CIVIL CASES**

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

TITLE OF CASE: _____

CASE NUMBER(S): _____

TYPE OF CASE:
(circle all that apply)

Order to Show Cause - Child Support

Contempt

Other: _____

Please Print All Information

PART A

What is your full name (include any aliases)? _____

Home phone number: _____ Work: _____ Cell: _____

City and State of Home Address: _____

Year of birth: _____

Have you ever had an appointed lawyer? YES _____ NO _____

If yes, who was your attorney? _____

If yes, when and in what county/state? _____

PART B

Do you receive any of the following governmental benefits:

TANF: YES _____ NO _____ Medical Assistance for the Elderly: YES _____ NO _____

Supplemental Security Income: YES _____ NO _____

If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, skip parts C, D, and E and go to Part F.

If you answered no to receiving TANF, Supplemental Security Income, **AND** Medical Assistance for the Elderly, complete the entire application in order for your eligibility for indigent defense services to be determined.

PART C

Are you employed? YES _____ NO _____
 If yes, print your employer's name, telephone number and address: _____

What type of work do you do? _____
 Is your job waiting for you? YES _____ NO _____ NOT SURE _____
 What is your supervisor's name? _____

Is your spouse employed? YES _____ NO _____ NOT MARRIED _____

Your Monthly income before taxes \$ _____	Cash on Hand \$ _____
Spouse's monthly income before taxes \$ _____	Bank Accounts \$ _____
Governmental/Public Assistance: \$ _____	Tax refund coming \$ _____
Unemployment \$ _____	Stocks/Bonds \$ _____
Pension \$ _____	Land/Real Estate \$ _____
VA Disability \$ _____	Value of Home/Mobile Home \$ _____
Military Allotment \$ _____	Value of Vehicles \$ _____
Spousal/Child support \$ _____	Livestock \$ _____
Other Income \$ _____	Household Goods \$ _____
Total Monthly Income \$ _____	Total Assets \$ _____

PART D

If you own or are buying property listed below, circle the item and then fill in the information about the property.

Property:	What is the make/model & year	Cost when you bought it	Present Value	How much do you still owe on it?
Car				
Second Car				
Pickup				
Truck				
Motorcycle				
Recreational Vehicle				
House / Mobile Home				
Other Real Estate				
Other Property: _____				
Other Property: _____				

PART E

Names of People living in your household (do not provide full names of minors, use only initials):

	<u>Name</u>	<u>Age</u>	<u>Relationship</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

Names, ages, and relationship of other dependents or others you support financially (do not provide full names of minors, use only initials):

1. _____
2. _____

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

YES _____ NO _____ If yes, please explain: _____

PART F

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that the information supplied on this form is not confidential, and that the accompanying reference list identifying redacted information will be provided to my attorney and to the ND Commission on Legal Counsel for Indigents. I also understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction.

If counsel is appointed for me, I understand that I have a continuing responsibility to inform the court of any changes in my financial condition. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for me at this time, I may be required to pay back those expenses to the State at a later time.

Date: _____

Signature _____

FOR COURT USE ONLY

Case Title(s): _____

Applicant is found to be:

_____ Not Indigent. The Application for appointed defense services is denied.

_____ Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents. If this is a child support enforcement proceeding or contempt proceeding, a prior judicial determination has been made that jail is a likely sanction.

Date: _____ Approved: _____

Judge of District Court or Designee

APPENDIX B

What constitutes a "Case Assignment"?

A "case assignment" in criminal matters, includes all charges against a single defendant that arise out of a single event, transaction or occurrence. For example, it would be one "case assignment" if a defendant has a DUI, a DUS and a No Insurance charge all arising from the same stop, whether or not the DUI, DUS and No Insurance offenses were charged in one or three charging documents.

A case assignment regarding a petition to revoke probation, includes all matters brought in the petition, or amended petition, no matter how many underlying cases are involved.

A case assignment regarding a post-conviction application involves all matters brought in the application, or amended application, no matter how many underlying cases are involved.

A case assignment regarding an appeal involves all matters raised in the appellate brief, no matter how many case assignments were involved at the trial level.

A case assignment regarding a child support matter involves all court files in which the petitioner and respondent are identical, but only includes those matters in the court files in which a constitution, statute or rule requires that an attorney be provided by this agency at public expense.

A motion for a new trial based on newly discovered evidence under Rule 33 (b) (1) of the North Dakota Rules of Criminal Procedure is a separate case assignment.

A "case assignment" in juvenile matters, which are informally adjusted, involve all the pending allegations concerning the juvenile, whether or not the allegations pertain to events occurring on the same or different dates.

A "case assignment" in juvenile deprivation matters, includes all allegations brought in a single petition alleging that the juvenile is deprived, whether or not the allegations pertain to events occurring on the same or different dates.

A "case assignment" in juvenile "unruly" matters, includes all allegations brought in a single petition alleging that the juvenile is unruly, whether or not the allegations pertain to events occurring on the same or different dates.

A "case assignment" in juvenile delinquency matters, includes all allegations against one juvenile that arise out of a single event, transaction or occurrence. For example, it would be one "case assignment" if a juvenile has criminal trespass and theft allegations arising from the same incident

A termination of parental rights case constitutes one "case assignment."

A case assignment regarding any other matter includes only the specific matter in the court file for which a constitution, statute or rule requires that an attorney be provided by this agency at public expense.

APPENDIX C
(sample Notice of Inadequate Information)

DATE

ADDRESS BLOCK
OF APPLICANT

CASE NAME
CASE NUMBER

TO:

Your request for indigent defense services has been received, but because it is incomplete, we are unable to determine if you qualify for services. The application is being returned to you, with this notice. Please return the application to this office, after you have completely filled in the following:

_____ Part A

_____ Part B

_____ Part C

_____ Part D

_____ Part E

_____ applicant's signature missing

_____ other - _____

The court will not postpone or continue hearings while you complete and re-submit the application. If you intend to re-submit the application, you should do so as soon as possible.

SIGNATURE BLOCK
OF COURT STAFF

APPENDIX D

Income Guidelines 2009

These guidelines for gross income levels indicate income levels at or below which eligibility for indigent defense services should be considered.

Household Size	1	2	3	4
Annual Gross Income	13,538	18,213	22,888	27,563
Monthly Gross Income	1,128	1,518	1,907	2,297
Weekly Gross Income	260	350	440	530

Household Size	5	6	7	8
Annual Gross Income	32,238	36,913	41,588	46,263
Monthly Gross Income	2,687	3,076	3,466	3,855
Weekly Gross Income	620	710	800	890

(Add \$4,675 for each additional member in households of more than eight.)

These income levels reflect 125% of the official poverty level threshold as defined by the Department of Health and Human Services (74 F.R. 4199-4201, January 23, 2009).

APPENDIX E
(Sample Denial Form)

DATE

ADDRESS BLOCK
OF APPLICANT

CASE NAME
CASE NUMBER

TO:

Your request for indigent defense services has been denied because you do not meet the income/asset eligibility guidelines.

You may request that a district court judge review this denial. To do this, you should submit a written request for review that includes an explanation of why you think the denial was incorrect. Attach to the request any additional information that you want the judge to consider.

The court will not postpone or continue hearings because you have filed a request for review. If you intend to file a request for review, you should do so as soon as possible.

SIGNATURE BLOCK
OF COURT STAFF

APPENDIX F

IN DISTRICT COURT, _____ COUNTY, NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff,)	Case No. _____
)	
vs.)	ORDER UPON JUDGE'S REVIEW
)	OF FINDING OF INELIGIBILITY
_____,)	FOR INDIGENT DEFENSE SERVICES
)	
Defendant.)	

The above-named Defendant requests a review of the denial of his/her application for indigent defense services. Upon review of the application, and based on _____

the Court hereby finds that applicant is:

_____ Not Indigent.

_____ Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents. The Court hereby advises the Defendant of his/her potential obligation to reimburse the Commission the amounts expended on behalf of the Defendant.

Dated this _____ day of _____, 200__.

BY THE COURT:

Judge of District Court

c: Defendant
State's Attorney
Commission on Legal Counsel for Indigents

APPENDIX G

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS Complaint Procedure

The Commission on Legal Counsel for Indigents provides indigent defense services to eligible clients in North Dakota district and juvenile courts. If you have an "appointed attorney," he or she is employed by our agency as a "public defender" or has contracted with our agency to provide representation to indigent clients. Please note, you do NOT have the right to an appointed attorney of your own choice. If you are dissatisfied with your appointed attorney, first let the attorney know what your objection is, and try to resolve your problem. Your attorney will remain your attorney, unless he or she withdraws as counsel, in writing, and the Commission permits the withdrawal (at the beginning of a case), or the judge orders (at any time after the attorney has made "an appearance" in the case) that the attorney is released from the case.

If you have a complaint to lodge against your attorney, there are two agencies with which you can do so. You can file a written complaint with the Commission, and/or if you believe your attorney has committed an ethical violation as defined in the North Dakota Rules of Professional Conduct, you can submit a written complaint to the Disciplinary Board of the North Dakota State Bar Association.

If you wish to lodge a complaint against your attorney with the Commission, you must file a WRITTEN complaint and send it to:

Commission on Legal Counsel for Indigents
PO Box 149
Valley City, ND 58072

Your complaint must include the following:

- 1) your name
- 2) your address
- 3) your phone number
- 4) your attorney's name
- 5) the name(s) of the charge(s), and the county in which you are charged
- 6) the case number(s), if you know it/them
- 7) a detailed explanation of your complaint
- 8) a statement of what you would like done

After the Commission receives your complaint, we will contact your attorney, obtain a response, and determine what, if anything should be done in the situation.

EXHIBIT H

PRESUMED RATE FOR ATTORNEY FEE REIMBURSEMENT NDCC §§ 12.1-32-08, 27-20-49, 29-07-01.1, 29-32.1-05

Pursuant to the rates being set by the Commission on Legal Counsel for Indigents on June 3rd, 2009, at a regularity scheduled Commission meeting, the following have been established as presumed attorney fees for varying types of cases, pursuant to an analysis by the Executive Director of the Commission of hours worked on cases by indigent counsel throughout the seven judicial districts for a year's period, as follows, to wit:*

<u>Type of case assignment</u>	<u>Average hours worked</u>	<u>Presumed amount per case</u>
Misdemeanor case	3.6 hours	\$260.00
Felony case	5.5 hours	400.00
Juvenile case (non TPR)	3 hours	220.00
Termination of Parent Rights	10 hours	715.00
Appeal case	30.4 hours	2175.00
Post-conviction case	10 hours	715.00

*The rate used by the Commission for payment of attorney fees is \$65.00 an hour, which is the rate upon which our contracts with indigent case providers are figured, plus an additional 10% for administrative costs was added to the amount.