

**CHAPTER 135-10**

**PUBLIC DEFENDER ELIGIBILITY RULES AND REGULATIONS**

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Chapter Authority: 1 CMC § 2204.

Chapter History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

Commission Comment: 1 CMC § 2201 creates an Office of the Public Defender in the Commonwealth government, headed by a Public Defender. The Public Defender is charged with defending indigent defendants in criminal cases and rendering legal assistance to persons in need of legal counseling who are unable to afford the services of private counsel. See 1 CMC § 2203. 1 CMC § 2204 authorizes the Public Defender to promulgate rules and regulations to establish eligibility criteria.

**Part 001 - General Provisions**

**§ 135-10-001 Authority**

The regulations in this chapter are promulgated by the Office of the Public Defender pursuant to 1 CMC § 2204.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

**§ 135-10-005 Purpose**

The regulations in this chapter are promulgated in order to increase the Public Defender eligibility standards in order to make our indigent defense services available to a larger number of indigent persons in the CNMI. In addition, the rules will set forth the procedure for eligibility determinations in order to unify and standardize the eligibility determination procedure and bring it into compliance with existing law.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

**§ 135-10-010 Background**

The Sixth Amendment to the United States Constitution and article I, section 4(a) of the Northern Marianas Islands Constitution guarantees to all persons accused of a crime the right to

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counsel. Every person accused of a crime who cannot afford to hire an attorney must be provided with counsel before he or she can be sentenced to jail or prison. The regulations in this chapter set maximum income levels and procedural guidelines for those individuals applying for indigent defense services.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

### § 135-10-015 Definitions

(a) “Applicant” means any defendant in criminal cases before the courts of the Commonwealth or before courts having appellate jurisdiction over cases before the courts of the Commonwealth wishing to apply for indigent defense services.

(b) “Household gross annual/monthly income” means salary, receipts, or proceeds of a business before deduction or expenditures for any purpose. The calculation of household gross annual/monthly income shall include income from whatever source derived and shall include the income of each person living in the household. In juvenile cases, the household gross annual/monthly income shall include the income of both parents.

(c) “Liquid assets” means those assets which are readily convertible to cash and include, but are not limited to cash, bank accounts, time certificates, stock, bonds, etc.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

### Part 100 - Eligibility Provisions

#### § 135-10-101 Public Defender Services

The Office of the Public Defender has the following powers and duties:

(a) To defend indigent defendants in criminal cases before the courts of the Commonwealth or before courts having appellate jurisdiction over cases before the courts of the Commonwealth;

(b) To render legal assistance to those persons who are in need of legal counseling and who are unable to afford the services of private counsel.

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

#### § 135-10-105 Financial Eligibility

(a) Persons shall be eligible for Public Defender’s assistance or other available indigent defense services if they fall within the following maximum income levels:

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Family Size	Household Gross Annual Income <sup>1</sup>	Gross Monthly Income <sup>2</sup>
1	\$10,800	\$900
2	\$14,400	\$1,200
3	\$18,000	\$1,500
4	\$21,600	\$1,800
5	\$25,200	\$2,100
6	\$28,800	\$2,400
7	\$32,400	\$2,700
8	\$36,000	\$3,000

(b) The judge before whom such applicant is appearing must also take into consideration assets, both liquid and non-liquid as follows:

- (1) Liquid assets may not exceed \$3,000 per person in household.
- (2) Substantial non-liquid assets will result in denial of eligibility.

<sup>1</sup> For family units with more than eight members, add \$3,600 for each additional member in the family.

<sup>2</sup> For family units with more than eight members, add \$300 for each additional member in the family.

(c) The eligibility of a person shall terminate at such time when the economic circumstances of such applicant change sufficiently to enable him or her to pay a reasonable attorney fee. Under these circumstances it should be presumed that a change of attorney will have an adverse effect on the applicant's/defendant's position in the matter. The assigned indigent defense attorney shall complete the case at the court level which is in process, unless it is reasonably certain to the indigent defense attorney that a change of attorney will not prejudice the client.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

### **§ 135-10-110 Procedure for Applying for Indigent Defense Eligibility**

(a) 1 CMC § 2204 states that “[t]he determination as to whether a defendant be indigent or whether a person is unable to afford a private attorney...shall be at the discretion of the judge before whom such person is appearing.” (1 CMC § 2204, emphasis added). The clear language of the statute gives exclusive discretion, as to eligibility, to the judge before whom the person is appearing. The Commonwealth Superior Court or courts having appellate jurisdiction over cases before the courts of the Commonwealth shall make eligibility determinations prior to the appointment of the Public Defender or any other indigent defense attorney in all criminal, juvenile and traffic cases.

(b) No judge shall delegate, assign, transfer, relinquish, or abdicate this responsibility to another individual, including the Public Defender, other defense attorneys, the Attorney

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General's Office or the Superior Court Office of Probation. The Office of Probation, however, may assist in the gathering of any and all information as may be required. Any and all information or records obtained during the financial eligibility process shall be kept strictly confidential and may not be released to the public, the media or either party to the action for any purpose whatsoever.

(c) Eligibility determinations shall be made at the initial appearance, or as soon thereafter as possible, but in any event prior to the appointment of counsel and arraignment. The Public Defender or appointed defense counsel shall commence representation upon receipt of a written order from the court appointing counsel and finding that the defendant is indigent.

Modified, 1 CMC § 3806(g).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

Commission Comment: In subsection (c), the Commission corrected the spelling of "receipt." The Commission inserted a comma after the word "relinquish" in subsection (b) pursuant to 1 CMC § 3806(g).

### **§ 135-10-115 Challenges to Eligibility Determinations**

(a) The following procedures shall be used in challenging the eligibility or denial of indigent defense services.

(b) The aggrieved person making such challenge shall submit to the judge presiding over the case a written statement outlining any and all information pertinent to the eligibility determination. Upon receipt of the written grievance(s), the judge presiding over the case shall issue a written opinion stating the reasons for denial of indigent defense services. The aggrieved person may appeal the adverse decision to the presiding judge of the Superior Court of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

## **Part 200 - Miscellaneous Provisions**

### **§ 135-10-201 Severability**

If any provision of the regulations in this chapter or the application of such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this regulation or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 19 Com. Reg. 15140 (Feb. 15, 1997); Proposed 18 Com. Reg. 14472 (Nov. 15, 1996).

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Commission Comment: The Commission changed “regulation” to “regulations” to correct a manifest error.