



NDCLCI

North Dakota Commission on Legal Counsel for Indigents

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Rep. Larry Bellew
Speaker of the House

Rep. Al Carlson
House Majority Leader

Rep. Corey Mock
House Minority Leader

Sen. Rich Wardner
Senate Majority Leader

Sen. Joan Heckaman
Senate Minority Leader

Greetings:

Kindly find enclosed the Commission's Report to the 65th Legislative Assembly as required by 2015 HB 1022.

Sincerely,

H. Jean Delaney

REPORT TO LEGISLATURE ON EFFECTIVENESS OF PROCEDURES
AS REQUIRED BY 2015 HB 1022
JANUARY 24, 2017
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community." We have always recognized that services should be provided only to those persons who are eligible. The Guidelines for Determining Eligibility for Indigent Defense Services note that "[i]t 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 could affect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly indigent." It has been the policy of the Commission to seek additional screening and review of applications by the court in questionable cases. Additionally, the Commission had implemented an Indigent Defense Task Force to investigate possible abuses of the system and to look at strategies for improvement. The Task Force members include Representative Kim Koppelman, who is one of the Commission's members, two judges, public defenders and contract attorneys, a court clerk, and a director of juvenile court services.

In 2015 House Bill 1022, the Legislature has directed the Commission to "report to the sixty-fifth legislative assembly regarding the effectiveness of limits and procedures used to ensure that defense services are provided only to indigent clients." To facilitate this report, the Commission's Indigent Defense Task Force undertook a review of many aspects of the determination of indigency. During several meetings, the Task Force members reviewed the Commission's governing statute, the Guidelines to Determine Eligibility for Indigent Defense Services, forms and procedures used for appointment of counsel in the various judicial districts, the procedures for review of findings of eligibility and the effectiveness of requests for reassessment, ethical issues of attorneys in requesting reassessment of eligibility and procedures to be followed by an attorney when the attorney obtains information that the client is ineligible. The Task Force also looked at how eligibility and assignment of attorneys is handled in some

other jurisdictions, and how screening for eligibility for services is handled by some other North Dakota agencies. The Task Force randomly sampled applications and findings of eligibility from all judicial districts to determine compliance with agency standards and policies. The Task Force also sampled compliance following additional training on the Guidelines. Indigent defense attorneys were surveyed, and it was generally felt that in the vast majority of the cases, the clients were truly indigent.

Based on the information received and research conducted, the Task Force made several findings of procedures that are effective in ensuring services are provided only to eligible persons, and the Task Force made several recommendations. These findings and recommendations were adopted by the Commission at its meeting on October 5, 2016.

The findings/recommendations deal with three main areas: training, updating the applications for the services, and review of indigency determinations,

Training on the Guidelines to Determine Eligibility for Indigent Defense Services is of primary importance to ensure compliance. It was found that the Commission should continue to provide training to those persons who make the eligibility determinations, and look at new and additional ways to reach them. The Commission has been providing training to court clerks individually, in their counties, and through Go To Trainings organized by the judiciary; and is seeking to provide training to judges. It was also found that the Commission should provide training to State's Attorneys on the Guidelines. The Commission's Director and Deputy Director provided this training on January 18, 2017 at the State's Attorneys' winter meeting.

It was found that the Commission should continue to provide training to its attorneys and court staff on what an attorney should do to seek review of eligibility of persons who have become employed or whose circumstances have significantly changed following an initial finding of eligibility. This training is provide to its attorneys and court staff as part of the training on the Guidelines, and as part of training of attorneys on the attorney's ethical obligations.

It was found that the application for services should be updated with simpler language; this will make it easier to obtain necessary information on income and assets. It was also found that the application should be updated to include authorization by the applicant for investigation of the applicant's income and assets, and a release of information from any source that might have such information. An updated application has been drafted at an 8th grade reading level,

and it includes an authorization/release. It has gone out to interested persons for comment. Based on the comments received, the Commission will determine whether to adopt the updated form, or further modify it.

It was recommended that the Commission consider, develop and implement a process to review eligibility of persons who have bonded out of jail when they were initially found eligible while in jail. The current procedure is to send out a letter asking the Court to reassess eligibility of a person who found to be eligible if it looks like the person was temporarily indigent due to incarceration, but who is likely employed upon release. A more formal process is being explored.

It was found that the Commission should continue to randomly spot check applications in the different judicial districts to ascertain compliance with the Guidelines. This is a valuable way to make sure that the person for whom services was provided is truly eligible for services. The Commission continues to do this.

It was found that the Commission should ascertain whether statutory revision is necessary to ensure compliance with the Guidelines. The Commission is in support of 2017 HB 1235 as a way to permit it to verify eligibility when spot checking applications, and when questions arise as to eligibility in a specific case.

Finally, it was recommended that there be no changes as to which entity determines eligibility. Pursuant to NDCC section 54-61-01, the Court makes the determination of eligibility. It is most effective to have the Court or the clerk as the Court's designee determine eligibility. To have another entity, such as the Commission, make this determination would be more expensive, and due to the large number of applications, findings of eligibility would be delayed, which would lead to delayed assignment of counsel.

The vast majority of the clients to whom services are provided are truly indigent, The policies and procedures currently in place are effective in ensuring that services are provided only to indigent persons. Implementing the recommendations as discussed above will further ensure that services are provided only to indigent persons.