

RIGHT TO AND ASSIGNMENT OF LAWYER

(a) Types of Proceedings. The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant has been arrested, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every critical stage of the proceedings.

(c) Explaining the Availability of a Lawyer.

(1) When a person has been arrested he or she shall as soon as practicable be advised of the right to a lawyer. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place him or her in communication with a lawyer.

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person's family. A lawyer shall not be denied to any person merely because his or her friends or relatives have resources adequate to retain a lawyer or because he or she has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether he or she is financially able to obtain a lawyer shall be under oath and shall not be available for use to the prosecution in the pending case in chief.

(4) Before appointing a lawyer for an indigent person, or at the first appearance of the lawyer in the case, the court shall ensure the lawyer is in compliance with the Certification of Compliance requirement in the Supreme Court's Standards for Indigent Defense.

(e) Withdrawal of Lawyer. Whenever a case has been set for trial, no lawyer shall be allowed to withdraw except upon consent of the court for good cause shown and upon substitution of another lawyer or upon the defendant's knowing and voluntary decision to proceed without a lawyer.

(f) Services Other Than Lawyer.

(1) A lawyer for a defendant who is financially unable to obtain investigative, expert or other services necessary to an adequate defense in the case may request them by a motion to the court.

(2) Upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to which the administration of the program may have been delegated by local court rule, shall authorize the services. The motion shall be made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

(3) Reasonable compensation for the services shall be determined and payment directed to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

[Adopted effective September 1, 1987; Amended effective September 1, 1995; June 30, 2012; February 1, 2021; January 1, 2023.]