

§57.082 FS | DETERMINATION OF CIVIL INDIGENT STATUS

(1) APPLICATION TO THE CLERK.—A person seeking appointment of an attorney in a civil case eligible for court-appointed counsel, or seeking relief from payment of filing fees and prepayment of costs under s. 57.081, based upon an inability to pay must apply to the clerk of the court for a determination of civil indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court.

(a) The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.

2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.

3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

4. All liabilities and debts. The application must include a signature by the applicant which attests to the truthfulness of the information provided. The application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.

(b) The clerk shall assist a person who appears before the clerk and requests assistance in completing the application, and the clerk shall notify the court if a person is unable to complete the application after the clerk has provided assistance.

(c) The clerk shall accept an application that is signed by the applicant and submitted on his or her behalf by a private attorney who is representing the applicant in the applicable matter.

(d) A person who seeks appointment of an attorney in a proceeding under chapter 39, at shelter hearings or during the adjudicatory process, during the judicial review process, upon the filing of a petition to terminate parental rights, or upon the filing of any appeal, or if the person seeks appointment of an attorney in a reopened proceeding, for which an indigent person is eligible for court-appointed representation must pay a \$50 application fee to the clerk for each application filed. A person is not required to pay more than one application fee per case. However, an appeal or the reopening of a proceeding shall be deemed to be a distinct case. The applicant must pay the fee within 7 days after submitting the application. If the applicant has not paid the fee within 7 days, the court shall enter an order requiring payment, and the clerk shall pursue collection under s. 28.246. The clerk shall transfer monthly all application fees collected under this paragraph to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund, to be used as appropriated by the Legislature. The clerk may retain 10 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue. If the person cannot pay the application fee, the clerk shall enroll the person in a payment plan pursuant to s. 28.246.

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking such designation is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in,

any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

(b) Based upon its review, the clerk shall make one of the following determinations:

1. The applicant is not indigent.
2. The applicant is indigent.

(c) If the clerk determines that the applicant is indigent, the clerk shall immediately file the determination in the case record.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application and comparing the information provided in the application to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and may not be based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

(e) The applicant may seek review of the clerk's determination that the applicant is not indigent in the court having jurisdiction over the matter by filing a petition to review the clerk's determination of nonindigent status, for which a filing fee may not be charged. If the applicant seeks review of the clerk's determination of indigent status, the court shall make a final determination as provided in subsection (4).

(3) APPOINTMENT OF COUNSEL ON AN INTERIM BASIS.—If the clerk of the court has not made a determination of indigent status at the time a person requests appointment of an attorney in a civil case eligible for court-appointed counsel, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint counsel on an interim basis.

(4) REVIEW OF THE CLERK'S DETERMINATION.—

(a) If the clerk of the court determines that the applicant is not indigent and the applicant seeks review of the clerk's determination, the court shall make a final determination of indigent status by reviewing the information provided in the application against the criteria prescribed in subsection (2) and by considering the following additional factors:

1. Whether paying for private counsel or other fees and costs creates a substantial hardship for the applicant or the applicant's family.
2. Whether the applicant is proceeding pro se or is represented by a private attorney for a fee or on a pro bono basis.
3. When the applicant retained private counsel.
4. The amount of any attorney's fees and who is paying the fees.
5. Any other relevant financial circumstances of the applicant or the applicant's family.

(b) Based upon its review, the court shall make one of the following determinations and shall, if appropriate, appoint counsel:

1. The applicant is not indigent.
2. The applicant is indigent.

(5) APPOINTMENT OF COUNSEL.—In appointing counsel after a determination that a person is indigent under this section, the court shall first appoint the office of criminal conflict and civil regional counsel, as provided in s. 27.511, unless specific provision is made in law for the appointment of the public defender in the particular civil proceeding. The court shall also order the person to pay the application fee under subsection (1), or enroll in a payment plan if he or she is unable to pay the fee, if the fee remains unpaid or if the person has not enrolled in a payment plan at the time the court appoints counsel. However, a person who is found to be indigent may not be refused counsel.

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.

(7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

(a) If the court learns of discrepancies between the application and the actual financial status of the person found to be indigent, the court shall determine whether the status and any relief provided as a result of that status shall be revoked. The person may be heard regarding the information learned by the court. If the court, based on the information, determines that the person is not indigent, the court shall revoke the provision of any relief under this section.

(b) If the court has reason to believe that any applicant, through fraud or misrepresentation, was improperly determined to be indigent, the matter shall be referred to the state attorney. Twenty-five percent of any amount recovered by the state attorney as reasonable value of the services rendered, including fees, charges, and costs paid by the state on the person's behalf, shall be remitted to the Department of Revenue for deposit into the Grants and Donations Trust Fund within the Justice Administrative Commission. Seventy-five percent of any amount recovered shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(c) A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(History.—s. 35, ch. 2005-236; s. 24, ch. 2007-62; s. 27, ch. 2008-111; s. 9, ch. 2009-61; s. 21, ch. 2010-162; s. 35, ch. 2012-30.)