Jason B. Zeigler

Attorney and Counselor at Law 499 South Warren Street, Suite 518 Syracuse, New York 13202 (p) (315) 430-3778 (f) (315) 475-1752 zeiglerlawoffice@gmail.com

July 9, 2015

New York State Office of Indigent Legal Services 80 South Swan Street Albany, New York 12210

RE: Outline: Testimony at ILS Hearing on Eligibility for Assignment of Counsel

New York State Office of Indigent Legal Services,

My name is Jason Zeigler. I have been on the Onondaga County Assigned Counsel Panel since 2006. I am also a member of the Onondaga County Gideon Society. The Onondaga County Gideon Society is an organization supporting the professionals who work in the field of mandated legal representation in Onondaga County, New York.

I am speaking today for myself and on behalf of a number of people from the Onondaga County Gideon Society.

CRITERIA for eligibility

- Ability to Post Bond
 - o Did the defendant or someone else post the bond?
 - o If the defendant posted the bond, does the defendant still have the funds to retain an attorney?
- Actual Cost of Retaining Counsel
 - o Severity of the Case:
 - AUO 3rd is not a Class B Felony
 - Burglary in the First Degree is not an Unclassified Misdemeanor
 - o Determining the realistic actual cost of retaining counsel. How much work involved in the average case:

- Pretrial, Motions, and Trial
- First-Offense Petit Larceny v. DWI v. Felonies
- Prior Record
- Client's decision to accept//reject an offer
- Client's decision to go to trial
- o A chart should be developed to determine eligibility based on the actual cost of retaining counsel on a type of charge in relation to for income and assets, A simplified and truncated example would be as follows:

Murder/Manslaughter	\$d.00/wk or	h/wk or u in	l/wk or y in
	\$q.00 in assets	assets	assets
Felony	c/wk or p in	g/wk or t in	k/wk or x in
	assets	assets	assets
DWI	b/wk or o in	f/wk or s in	j/wk or w in
	assets	assets	assets
Misdemeanor	a/wk or n in	e/wk or r in	i/wk or v in
,	assets	assets	assets
Eamily size of	1		2

Family size of

1

2

3

- Living Expenses of the charged individual and his/her dependents
 - o Gross income versus net income after taxes
 - Bank account amounts derived from fixed income payments (eligible based on SSI, SSI payment sitting in the bank makes them ineligible)
 - Child support inquiries when applicant has stated they are not receiving child support
- Ownership of an Automobile
 - o Transportation to and from work in Central New York
- Receipt of Public Benefits, Home Ownership, and Non-Liquid Assets
 - o Actual equity in the home
 - o Whether equity can be accessed
 - Penalties associated with early withdrawal of retirement accounts, which reduce the amount of assets actually available
- Income and Assets of Family Members
 - o Who is the one charged with the crime?
 - o How is the family responsible to provide counsel?
 - o When family is the alleged victim

- When family is estranged: refusal of family to submit paperwork
- Debts, Financial Obligations, and Housing Status in a Correctional Facility
 - o Incarceration and
 - The likelihood of release
 - The likelihood of still having the job/place to live
- The use of Fixed Poverty Guidelines
 - o Eligibility if receiving public assistance, SSD, SSI, Worker's Compensation
 - Some on SSI have been deemed ineligible because over income, own a home (with no regard to equity)

PROCESS for disseminating criteria for determining eligibility

- Published online and given to defendant upon initial assignment

PROCESS for reviewing, appealing and/or reconsidering eligibility determinations

- Who makes the determination and how to appeal/reconsider eligibility determinations should be given to those assigned and posted.
- Multiple Judge Assignments: Who decides v. current hodgepodge system where one judge says eligible who another judge says ineligible?

UNIFORM GUIDELINES to determine eligibility

- Realistic and uniform guidelines are necessary for the system to be workable

CONFIDENTIALITY of information submitted to determine eligibility

- Does one have to waive the Fifth to get the Sixth?: Instances of ACP information being subpoenaed by the DA's Office: example: forgery cases.

STANDARDIZATION and its related social and economic benefits

- How can a system of eligibility be fair without standardized eligibility?

ELIGIBILITY STANDARDS IN ONONDAGA COUNTY (2014)

- Eligibility for Supplemental Nutrition Assistance Program, a/k/a Food Stamps, is less stringent than current eligibility standards as put out by the Onondaga County Assigned Counsel Program: you can't afford to buy all of your food, but you can afford an atterney.

HOW INFORMATION IS COLLECTED IN ONONDAGA COUNTY

- Attorneys should not be the primary method of collecting information

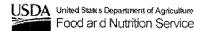
- Individuals seeking court-appointed counsel should be able to go to the Assigned Counsel Office during regular business hours to drop off paperwork and make eligibility inquiries
- Online access to eligibility processing: so that those seeking a court-appointed attorney can see what paperwork needs to be submitted
- Online application should be allowed.
- Information gathering should be streamlined: ACP's insistence on getting aq document with the original signature as opposed to a copy is outdated and slows down the processing of paperwork
- Focus of whoever is processing applications for court-appointed counsel should be on processing paperwork and not in finding creative ways to deny eligibility.

WRITTEN COMMENTS FROM OTHER PANEL ATTORNEYS

- Karin Marris
- Anthony Belletier
- Martha Hertzberg
- Marcus Stornelli

Sincerely,

Jason B. Zeigler, Esq.



Home

Supplemental Nutrition Assistance Program (SNAP)

Income (Rules on income limits)

Households must meet income tests UNLESS all members are receiving Title IV (TANF), SSI, or in some places general assistance.

Most households must meet both the gross and net income tests, but a household with an elderly person or a person who is receiving certain types of disability payments only has to meet the net income test. Gross income means a household's total, non-excluded income, before any deductions have been made. Net income means gross income minus allowable deductions.

Households, except those noted, that have income over the amounts listed below cannot get SNAP benefits.

Income Chart

(Oct. 1, 2014 through Sept. 30, 2015)

Household size	Gross monthly income (130 percent of poverty)	Net monthly income (100 percent of poverty)
1	\$1,265	\$ 973
2	1,705	1,311
3	2,144	1,650
4	2,584	1,988
5	3,024	2,326
6	3,464	2,665
7	3,904	3,003
8	4,344	3,341
Each additional member	+440	+339

Last Published: 09/25/2014

OCBA Assigned Counsel Program, Inc. 2014 Eligibility Guidelines

(Applicable to cases assigned after February 1, 2014)

CLIENT INCOME

Family Silze (include client)	Gross Income Annually	Gross Income Monthly	Gross Income Bi-Weekly	Gross Income Weekly
1	\$14,588	\$1,216	\$561	\$281
2	\$19,663	\$1,639	\$756	\$378
3	\$24,738	\$2,062	\$951	\$476
4	\$29,813	\$2,484	\$1,147	\$573
5	\$34,888	\$2,907	\$1,342	\$ 571
6	\$39,963	\$3,330	\$1,537	\$ 769
7	\$45,038	\$3,753	\$1,732	\$366
8	\$50,113	\$4,176	\$1,927	\$964
Each addit onal				
person add	\$5,075	\$423	\$195	598

Based upon HHS Guideline published in the Federal Register, January 22, 2014

Family Size

This figure includes the client, client's spouse, and their children under 21 years, RESIDING with client full time. DO NOT include children in the primary custody of another person, children of a non-spouse or other dependents such as siblings or grandchildren. Absent unusual circumstances, client receives credit for EITHER child support or for resident children, but not both.

Income

This figure is the total gross income, from all sources, for all members of the family. This should include wages of all family members, as well as public assistance, TANFF assistance, disability, 'Worker's Compensation, SSI, or other sums received by or on behalf of ALL members of the family, including resident children. Child support (current care) actually paid, pursuant to a Court Order, will be deducted from gross income, assuming verification can be provided.

Client Assets

Assets, such as real estate, bank accounts or trust accounts, pension funds, 401(k) or IFA accounts, as well as stocks, bonds, cash bail, or any other assets which could be applied to payment of attorney's fees, or which could be used as collateral for a loan sufficient to pay fees, are also considered.

FAILURE TO COOPERATE WITH THE ACP ELIGIBILITY PROCESS (INCLUDING FAILURE TO PROVIDE DOCUMENTATION REQUESTED) MAY RESULT IN A RECOMMENDATION OF INELIGIBILITY.



SNAP Benefits (formerly Food Stamps)

What are SNAP Benefits (formerly Food Stamps)?

SNAP Benefits (formerly Food Stamps) are benefits that can help you buy food. Benefits are provided on an electronic benefit card, similar to a debit or credit card. Eligibility and benefit levels are based on household size, income, expenses and other factors. Anyone can apply for SNAP Benefits (formerly Food Stamps).

How do I know if I qualify for SNAP Benefits (formerly Food Stamps)?

If your income (based on your family size) is less than or equal to the amounts in the charts below, you *may* be eligible for Food Stamp benefits. The only way to know for sure if your household is eligible for SNAP Benefits (formerly Food Stamps) is to apply.

What counts as income?

"Income" means your household's total gross monthly income before taxes and withholdings are subtracted. Certain household expenses, such as monthly Child Support payments, also can be deducted from gross income when calculating your household's income. Benefits from other assistance programs such as Unemployment Insurance Benefits, public assistance payments, Social Security or SSI benefits count as income.

What are the income guidelines?

2013 Income Guidelines (no elderly or disabled member) Effective October 1, 2013 to September 30, 2014 (130 Percent of the Poverty Level)				
Family Size	Monthly Gross Income	Annual Gross Income		
1	\$1,245	\$ 14,940		
2	\$ 1,681	\$ 20,172		
3	\$ 2,116	\$ 25,392		
4	\$ 2,552	\$ 30,624		
5	\$ 2,987	\$ 35,844		
6	\$ 3,423	\$ 41,076		
7	\$ 3,858	\$ 46,296		
8	\$ 4,294	\$ 51,528		
Ea. Add. Person	+ \$436	+ \$5,232		

Is there a resource limit for SNAP Benefits (formerly Food Stamps)?

Sometimes. The only time resources count is if you are on public assistance and a member of your household has been sanctioned or disqualified from getting SNAP Benefits (formerly Food Stamps).



Reminder: Testifying at ILS Hearing in Syracuse Regarding Eligibility for an Assigned Attorney

Karin Marris <khm9@frontiemet.net>
To: Jason Zeigler <zeiglerlawoffice@gmail.com>

Thu, Jul 2, 2015 at 9:54 AM

Jason,

We will be out of town for the meeting. I was wondering if someone signed up to speak could mention a couple of problems I've run into.

One of the issues that seems to interfere with an assigned lawyer's ability to do the best job for clients is getting them qualified. Firstly, clients are rarely informed that they do not actually have an assigned lawyer until they provide required paperwork and are qualified by the ACP. Many clients are insulted when they learn that they still have to be qualified for an AC. Explaining and obtaining the required paperwork takes a lot of time and energy and, as you know, this has to be balanced with the requirement that zealous representation must start immediately. It appears to me that having clients prequalified before they are assigned a lawyer would help the assigned lawyer and the AC Program.

There is often significant lag time, or the client has not cooperated at all, in collecting all of the required information regarding eligibility. This often results in getting Orders to Continue from the judges who do not want to see their classes stalled. Or, in the alternative, payment is denied at the end of the case because an O to C was not obtained in time, either because a lawyer diligently working on the legal issues unknowingly overlooks that AC paperwork was never returned by the client or it was assumed at the time of assignment that the form was completed at arraignment. The current system does not work for the lawyer or for the ACP. The ACP actually loses money because they are having to pay vouchers based on Orders to Continue for many cases that would otherwise probably not be eligible.

Another issue that appears to interfere with an assigned lawyer's ability to zealously represent their client is the ACP's objections and cutting from vouchers time spent in court. ACP expects lawyers to tell the judges that cases are to be adjourned. Just because there is no disposition does not mean the Court does not want the case on. The lawyers are not in charge of the Court's calendar and unfortunately the DA's office conferences cases at the bench which further complicates the appearance issue. It is rare to be able to conference cases with DA's prior to a court appearance.

Lastly, the ACF's hard and fast rule regarding 90 days for submission of a voucher or it is rejected is untenable. There are too many variables in life, during the actual representation of a client - especially one who has multiple matters pending, and in a legal office, to have such a rule. There must be more flexibility balanced with the Programs own financial reporting requirements.

Thank you for always being so zealous when it comes to representing those that deserve the best possible representation from the very best kind lawyers.

Karin Marris

> On Jul 1, 2015, at 1:31 PM, Jason Zeigler < zeiglerlawoffice@gmail.com> wrote:

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ILS: Public Hearing on Eligibility for Assignment of Counsel

Anthony Belletier < belletierlaw@gmail.com>

Wed, Jul 8, 2015 at 2:54 PM

To: Jason Zeigler < zeiglerlawoffice@gmail.com>

Cc: onondaga-county-gideon-society < onondaga-county-gideon-society@googlegroups.com>

I would say that ACP uses frivolous reasons to deny eligibility as part of its general policy of making it as difficult as possible to bill for our services and to delay or deny payment as much as possible.

Anthony Belletier, Esq. Belletier Law Office

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Jason Zeigler

You received this message because you are subscribed to the Google Groups "Onondaga County Gideon Society" group.

To unsubscribe from this group and stop receiving emails from it, send an email to onondaga-county-gideon-society+unsubscribe@googlegroups.com.

To post to this group, send email to onondaga-county-gideon-society@googlegroups.com.

For more options, visit https://groups.google.com/d/optout.



Qualifying clients

Martha Hertzberg hertzberglaw@gmail.com To: Jason Zeigler <zeiglerlawoffice@gmail.com> Wed, Jul 8, 2015 at 4:12 PM

I would add: what do they do??? They should be qualifying the clients, otherwise, we take the assignment then have to make a motion to be relieved—this costs the county MORE than if AC would just qualify applicants (line is done everywhere else).

Sent from my inhone



ILS: Public Hearing on Eligibility for Assignment of Counsel

marcus stornelli <stornellilaw@gmail.com>
To: Jason Zeigler <zeiglerlawoffice@gmail.com>

Wed, Jul 8, 2015 at 4:15 PM

----- Forwarded message -----

From: marcus stornelli <stornellilaw@gmail.com>

Date: Wed, Jul 8, 2015 at 4:01 PM

Subject: Re: ILS: Public Hearing on Eligibility for Assignment of Counsel

To: Anthony Belletier < belletierlaw@gmail.com>

- 1. Asking assigned attorneys to enquire as to what their clients were doing before they were incarcerated.
- 2. Insisting on using pre-tax income only for eligibility determinations. Not one single client of mine has ever understood why their income determination cannot take into account the mandatory taxes they have to pay...
- 3. Does your spouse's income really have anything to do with your fundamental 6th amendment right to counsel?

And they certainly shouldn't ask for spouse's income when the spouse is the victim in the case. Thats a conflict of interest

4. Why should subsequent changes in a defendant's income be asked for and/or required after the initial financial affidavit is submitted? I don't believe the 6th Amendment would allow the state to take away someone's assigned attorney once he/she has already qualified for assigned counsel at arraignment. Therefore, subsequent financial status changes are basically moot, unless the ACP wants to start asking defendant's to chip in some percentage of the cost of representation after the close of the case, which they are not doing now.

Good luck.

Marcus Stornelli
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