

Testimony Topics

Regarding

Eligibility for Mandated Representation

- I. Grab the Eligibility Decision ! It is to be made by the Public Defender!
- II. Elements of the economic side- What does "able to afford counsel" mean? It should mean ability to hire a lawyer without great disruption to life and obligations; Evaluate disposable income; Ignore tied up assets. Create detailed application form to smoke out facts. Ask defendant how he will hire a lawyer if he has to. Every case is unique. Stay flexible against the background of statewide standards!
- III. Further characteristics of the Defendant who is faced with sudden need for a lawyer:
Incarcerated? Working? Family/Support Obligations? Nature of the Case- In the marketplace higher-level or multiple charges and complexity mean greater private retainer required.
- IV. Disposable income analysis is central.
 - a. Income- job, available liquid assets from all sources count heavily.
 - b. Illiquid assets like real estate and an automobile are not to be regarded as disposable and are not income. Heavily-mortgaged house or car with large debt does not figure in analysis.
- V. Defendant's debt load of all kinds must be considered. All has to be subtracted from conclusion about disposable income. Intent is not to disrupt existing stability in a home. Intent is not to add to defendant's problems but to solve some of them.

Remember, "affording counsel" does not require hocking everything or damaging a family. The inquiry is to see if a defendant is qualified. It is NOT to find ways to disqualify him. If a decision on taking the case is close, tip in favor of the defendant and take the case!

Robert Linville

Public Defender, Columbia County