

**LCpd3 - Section-by-Section Analysis
Determination of Indigence by the Court**

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(1). Eligibility -- determination of indigence -- rules.	<p>(1)(b) requires OPD to file a motion to rescind when applicant is later determined to be ineligible for public defender services</p> <p>(1)(c) applicant may request the court to hold a hearing on a motion to rescind. If requested the court shall hold a hearing</p> <p>(1)(d) if the applicant does not request a hearing on the motion to rescind, order is rescinded; refers to "motion to rescind"</p> <p>(1)(e) a court may grant a motion to rescind</p> <p>(1)(f) propriety of a assignment of counsel is subject to inquiry by the court</p>	<p>(1)(b) requires the presiding court to determine eligibility. If court later determines the applicant is no longer eligible, the court will schedule a hearing on the rescission of counsel prior to rescinding the appointment of OPD</p> <p>(1)(c) applicant may waive the hearing on the rescission of appointment</p> <p>(1)(d) if applicant waives the hearing on rescission, order is rescinded; eliminates references to "motion to rescind"</p> <p>(1)(e) eliminates references to "motion to rescind", rather the court may order rescission</p> <p>(1)(f) struck because the propriety of the assignment of counsel is determined by the court in the first place</p>	<p>Because the OPD is no longer doing determinations, the court will have the exclusive ability to modify a determination of eligibility. For due process a hearing must be held prior to a rescission in order for the applicant to defend his or her eligibility</p> <p>OPD will no longer file a motion to rescind, rather the court will order a hearing in the event it believes the applicant is no longer eligible.</p>

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(2). Eligibility -- determination of indigence -- rules.	(2)(b) the application, financial statement and affidavit must be on a form prescribed by the Public Defender Commission (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application	(2)(b) the application, financial statement and affidavit must be on a form prescribed by the Montana Supreme Court (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application <u>OR for a delay in eligibility determination</u>	Because the Court is now determining eligibility, it should be explicit that OPD will not delay services in the event there is a delay in an eligibility determination
1	47-1-111(5). Eligibility -- determination of indigence -- rules.	(5) Allows the court or OPD to modify the determination of eligibility if additional information becomes available or if the applicant's financial circumstances change.	(5) Allows the court to modify the determination	

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(6). Eligibility -- determination of indigence -- rules.	<p>(6) Requires the commission to establish procedures and adopt rules to determine eligibility. Commission procedures and rules:</p> <p>(a) must ensure that the eligibility determination process is fair and consistent statewide;</p> <p>(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;</p> <p>(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;</p> <p>(d) must avoid unnecessary duplication of processes; and</p> <p><i>(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section.</i></p>	<p>(6) requires the presiding court to determine eligibility under subsection (3) and to implement procedures and rules adopted by the Montana Supreme Court.</p> <p>The rules and procedures adopted by the MSC must mirror (6)(a)-(d)</p> <p>eliminates (6)(e)</p>	
2/3	Effective Date/Applicability Date		Amendments to become effective July 1, 2017. OPD will continue with eligibility determinations for any applications received by June 30, 2017.	July 1, 2017.