

DETERMINATION OF INDIGENCY - INSTRUCTIONS FOR CLIENTS

Before CPCS can assign you an attorney, the Court must find that you are unable to pay the cost of an attorney. There are several forms and motions required before the Court can make this finding. Please follow these general instructions for completing the forms.

Letter to Clerk's Office:

- Write the date that you are mailing the documents.
- Write the address of the Court under the words "Criminal Clerk's Office" on the blank spaces provided.
- Write your name after the words "Commonwealth v."
- Fill in your docket number.
- Sign your signature

Defendant's Motion to Be Declared Indigent:

- Fill in the County before the word "ss."
- Fill in the name of the Court.
- Sign the motion.
- Write your address in the blank spaces provided.
- Write the date.

Affidavit of Indigency:

- Fill in the Court, Case Name, and Docket Number.
- Fill in your name as "Name of Applicant."
- Fill in your address.
- Section 1 – check one of the boxes "A," "B," or "C." If you receive any of the public assistance listed under A, including Mass Health, you can check box A. If you check box C, you will need to complete the Supplemental Affidavit of Indigency.
- Section 2 – The "other" box is already checked on this form. You do not need to check any other boxes.
- Section 3 – You do not need to check any boxes in this section.
- Sign and date the form.
- If you are incarcerated, you must attach a canteen statement

Supplement Affidavit of Indigency:

- Complete the information requested in the same way that you completed the Affidavit of Indigency.
- Answer the personal and financial questions to the best of your ability.

Mail all the forms (except the letter addressed to you) to the Criminal Clerk's Office of the Court where you were convicted.



**Committee for Public Counsel Services
Private Counsel Division**

75 Federal Street, 6th Floor, Boston, MA 02110

Tel: (617) 482-6212 – Fax: (617) 988-8455

ANTHONY J. BENEDETTI
CHIEF COUNSEL

HOLLY T. SMITH
DEPUTY CHIEF COUNSEL

ELIZABETH DEMBITZER
DIRECTOR OF CRIMINAL APPEALS

Dear _____,

Before CPCS can assign an attorney to your case, a Court must find you “indigent.” In other words, a judge must first find that you cannot pay for an attorney.

Please complete and file the following documents in the Court where you were convicted:

- Cover letter to the Criminal Clerk’s Office
- Motion to be Declared Indigent
- Affidavit of Indigence
- Statement of Canteen Account for the last six months (if you are incarcerated).

Mail or deliver these documents to the Court. Do not return these forms to CPCS.

Please let us know when the documents are filed. If you are found indigent, we will list your case for assignment. If the court denies your motion, you may be able to appeal the decision. Please contact me if you need more information.

Sincerely,

Kathleen O’Connell
Private Panel Support Attorney

Date: _____

Criminal Clerk's Office

[Address]

RE: Commonwealth v. _____
Docket # _____

Dear Clerk's Office:

Enclosed please find for filing the Defendant's Motion to Be Declared Indigent, with Affidavit of Indigency and, if required, a Canteen Statement.

I have requested the assignment of counsel from the CPCS post-conviction unit and was informed that before CPCS can assign counsel to my case I need to be found indigent by the Court. CPCS requested that I file the enclosed documents.

Please bring this motion to the attention of the Court for ruling. After the Court acts, please forward a copy of the motion to:

Criminal Appeals Unit
Private Counsel Division
75 Federal Street, 6th Floor
Boston, MA 02110

Thank you for your attention to this matter.

Sincerely,

[Signature]

COMMONWEALTH OF MASSACHUSETTS

_____, ss.
[County]

[Name of Court] Court

DEFENDANT'S MOTION TO BE DECLARED INDIGENT

Now comes the defendant, pro se, in the above-entitled matter and moves this Honorable Court, pursuant to G.L. c.211D and Supreme Judicial Court Rule 3:10, to determine the defendant indigent.

As reasons therefor, the defendant states:

1. The defendant is indigent and without funds to hire an attorney to pursue post-conviction remedies.
2. A party's indigency status may be reviewed at any stage of a court proceeding if information regarding a change in financial circumstances becomes available to a probation officer or through the court's verification system, or from some other source, including the party. SJC Rule 3:10, Section 7
3. The defendant has requested post-conviction assistance from CPCS, which can only be carried out if the defendant is declared indigent.

In support of this motion the defendant has attached his Affidavit of Indigency and, if required, Canteen Printout.

Respectfully submitted,

_____, Pro Se

[Signature]

[Name]

[Address]

Date: _____

AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION
OR STATE PAYMENT OF FEES & COSTS

(Note: If you are **currently confined in a prison or jail** and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of “normal” fees (for initial filing and service), **do not use this form**. Obtain separate forms from the clerk.)

Court Case Name and Number (if known)

Name of applicant: _____

Address: _____

(Street and number) (City or town) (State and Zip)

SECTION 1: Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:
I AM INDIGENT in that (*check only one*):

☐ (A) I receive public assistance under (*check form of public assistance received*):

- | | |
|---|---|
| ☐ Transitional Aid to Families with Dependent Children (TAFDC) | ☐ Medicaid (MassHealth) |
| ☐ Emergency Aid to Elderly, Disabled or Children (EAEDC) | ☐ Supplemental Security Income (SSI) |
| ☐ Massachusetts Veterans Benefits Programs; or | |

☐ (B) My income, less taxes deducted from my pay, is \$ _____ per ☐ week ☐ biweekly ☐ month ☐ year
(*check the period that applies*) for a household of _____ persons, consisting of myself and _____ dependents;
which income is at or below the court system's poverty level; (*Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk or check online at:*
<https://www.mass.gov/doc/poverty-threshold-guidelines/download>. The court system's poverty level is updated each year.)(List any other available household income for the checked period on this line: \$ _____); **or**

☐ (C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

SECTION 2: *(Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)*

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): *(Check all that apply and, in any "\$ ____" blank, indicate your best guess as to the cost, **if known.**)*

- ☐ Filing fee and any surcharge. \$ _____
- ☐ Filing fee and any surcharge for appeal. \$ _____
- ☐ Fees or costs for serving court summons, witness subpoenas or other court papers. \$ _____
- ☒ Other fees or costs of \$ _____ for *(specify)*: I am seeking to be found indigent so that CPCS may assign counsel to my case.

- ☐ Substitution *(specify)*: _____

SECTION 3: I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

- ☐ Cost, \$ _____, of expert services for testing, examination, testimony or other assistance *(specify)*:

- ☐ Cost, \$ _____, of taking and/or transcribing a deposition of *(specify name of person)*:

- ☐ Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant **not** represented by Committee for Public Counsel Services (CPCS-public defender).
- ☐ Appeal bond
- ☐ Cost, \$ _____, of preparing written transcript of trial or other proceeding
- ☐ Other fees and costs, \$ _____, for *(specify)*:

- ☐ Substitution *(specify)* _____

Date signed	Signed under the penalties of perjury x _____
By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.	
This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003. Fillable PDF created August 2013.	

SUPPLEMENT TO AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION
OR STATE PAYMENT OF FEES & COSTS

(Note: If you checked (C) on the AFFIDAVIT OF INDIGENCY, you must complete this form.)

Court

Case Name and Number (if known)

Name of applicant: _____

Address: _____
(Street and number) (City or town) (State and Zip)

Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear or affirm as follows:

1. PERSONAL INFORMATION

(a) Date of Birth: _____

(b) Highest Grade in School: _____

(c) Special Training: _____

(d) List any physical or mental disabilities which you wish to reveal and which affect your earning capacity or living expenses:

(e) Number of Dependents: _____

2. INCOME AFTER TAXES (monthly)

(a) If from employment, list your occupation and employer's name and address:

(b) Sources of income, if not from employment:

(c) My gross annual income for the past twelve months was: \$ _____

(d) Gross Income (monthly): \$ _____

(e) Taxes Deducted (monthly):

Federal Tax \$ _____

State Tax \$ _____

Social Security \$ _____

Medicare \$ _____

Other Taxes (*specify*) _____ \$ _____

Total Taxes Deducted \$ _____

(f) Total Income After Taxes (*subtract 2(e) from 2(d)*): \$ _____

(g) If any other member of your household is employed, list occupation and name and address of his/her employer and monthly income after taxes:

3. NET INCOME (monthly)

(a) Income After Taxes (*from line 2(f)*): \$ _____

(b) Expenses (monthly):

Rent or Mortgage \$ _____ Uninsured Medical Expenses \$ _____

Food \$ _____ Child Care \$ _____

Electricity \$ _____ Education Expenses for Children \$ _____

Gas \$ _____ Child Support \$ _____

Oil \$ _____ Clothing \$ _____

Water \$ _____ Laundry/Cleaning \$ _____

Telephone \$ _____ Car Insurance \$ _____

Health Insurance \$ _____ Transportation Expenses \$ _____

Other (*specify*): _____ \$ _____

Total Expenses \$ _____

(c) Income After Taxes Minus Expenses (monthly) (*subtract 3(b) from 3(a)*): \$ _____

4. ASSETS

(a) Own Home? Yes ☐ No ☐ Market Value \$ _____ Balance Owed \$ _____

(b) Own Car? Yes ☐ No ☐ Year & Make _____
Market Value \$ _____ Balance Owed \$ _____

(c) Bank Accounts (specify type and balance)

(d) Other Property including Real Estate (specify type and value)

5. DEBTS

(a) Specify:

6. MISCELLANEOUS

(a) Other facts which may be relevant to your ability to pay fees and costs?

Signed under the penalties of perjury: Signature: ☒ _____
Type/Printed Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Date signed: _____

By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003.
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