

Alabama Rules of Criminal Procedure

Rule 6. Right to counsel: appointment of counsel.

Rule 6.3. Determination of indigency.

(a) DEFINITION. The term “indigent,” as used in these rules, means a person who is financially unable to pay for his or her defense.

(b) AFFIDAVIT OF SUBSTANTIAL HARDSHIP. A defendant desiring to proceed as an indigent shall complete under oath an affidavit of substantial hardship concerning his or her financial resources and may also be examined under oath regarding his or her financial resources by the court responsible for determining indigency. The defendant shall be advised of the penalties for perjury as provided by law.

(c) RECONSIDERATION. If, after an initial determination of indigency or nonindigency, there has been a material change in circumstances or new information concerning a defendant’s financial status becomes available, either the defendant requesting appointment of counsel, the defendant’s appointed attorney, or the prosecutor may move for reconsideration of the defendant’s financial status.

Committee Comments

See Ala.Code 1975, §§ 15-12-1 through 15-12-5.

The purpose of Rule 6.3 is to establish a procedure for the determination of indigency, not to provide a new or different definition of indigency.

The definition of “indigent” has been taken from Ala.Code 1975, § 15-12-1. In making a determination as to whether a defendant is financially able to employ counsel, the court should consider such factors as the defendant’s income, sources of income, and sources of income of other members of the family; property owned; outstanding obligations; and the number and ages of any dependents; but it should not consider the fact that the defendant has been released on bond or the ability of friends or relatives not legally responsible for the defendant to obtain the services of counsel. The objection to the use of ability to post bond as a preclusive factor is that it places the defendant in the dilemma of choosing between having legal representation and being at liberty pending trial. Since the defendant’s liberty prior to trial often may be essential to the preparation of his defense, placing the defendant in such a dilemma may be the denial of the right to an effective defense. See comments to ABA, Standards for Criminal Justice, *Providing Defense Services* 5-6.1 (2d ed. 1986).

The criteria established by the rule differ from the standards for determining indigency contained in Ala.Code 1975, § 15-12-5. In the opinion of the Advisory Committee, the nature of the offense should have no bearing on the question of financial status, unless the legislative intent was to distinguish between minor misdemeanors and offenses punishable by incarceration. The Advisory Committee also believed that the effort and skill required to gather pertinent information, and the length and complexity of the proceedings are not properly part of the indigency investigation except as such factors may bear on the fee which would be charged by retained counsel, and thus on the ability of a defendant with limited means to employ counsel.

Section (b) permits the court to make the determination of indigency based solely upon the examination under oath and the affidavit submitted by the defendant. Ala.Code 1975, § 15-12-5, permits the court in appropriate situations to order a prosecutor, public defender, sheriff, probation officer, or other officer of the court to investigate and to report to the court on the defendant's financial situation. These rules are not intended to change that provision.

Section (c) allows the court to make a redetermination of a defendant's indigency status if there has been a material change in circumstances or when new information concerning eligibility becomes available.

A motion for redetermination of indigency may be made at any subsequent stage of the proceedings; it is not a one-time determination. It is conceivable, though not likely, that a defendant's status could change a number of times during the course of the criminal process. With each change, it is proper for the court to reconsider the defendant's status.

Section (c) is to be read in conjunction with Rule 6.2(c), which allows appointed counsel to withdraw on the ground of the defendant's ineligibility only upon a showing that the withdrawal will not disrupt the orderly processing of the case.