

Description of Major Revisions to Rule 3:10 of the Rules of the Supreme Judicial Court

Effective November 1, 2016

The major revisions to SJC Rule 3:10 clarify:

I. The standard for determining who is to be found indigent:

- Adds to the definition of parties who are deemed “indigent” and therefore entitled to appointment of counsel:
 - juveniles in child welfare proceedings,
 - juveniles in the care or custody of the Department of Children and Families, and
 - young adults between the ages of 18 and 22 who are parties in permanency hearings;
- Eliminates receipt of Medicaid as an automatic determinant of indigency, while specifying that it may be one factor in determining indigency; and
- Prohibits the questioning of parties regarding their immigration or citizenship status as part of the intake, indigency determination or verification process.


II. The imposition and collection of various indigency fees:

- Adds a definition of “contribution fee” to clarify that the fee imposed by a judge on parties deemed indigent but able to contribute to the cost of counsel does not include the indigent counsel fee assessed pursuant to G.L. c. 211D, §2A(f);
- Requires that contribution fees imposed on parties who are indigent but able to contribute not cause substantial financial hardship;
- Affords parties a right to be heard and to present information regarding whether a proposed contribution fee would cause them substantial financial hardship;
- Makes parents solely responsible for contribution fees for juveniles and parties over 18 they claim as dependents for tax purposes; and
- Defines how parents are to contribute to the cost of their children’s counsel and states that a parent’s failure to pay fees shall not be grounds to withhold or revoke a juvenile’s appointed counsel.

III. The procedural process to be used in determining indigency:

- States that parties bear the burden of proving their indigency by a preponderance of the evidence, in accordance with *Commonwealth v. Porter*, 462 Mass. 724 (2012);
- Specifies how to conduct a hearing when parties seek redetermination of indigency status, which is referred to but not described in the current Rule;
- Requires waiver of an indigent counsel fee if a judge determines that a party is unable to pay within 180 days;
- Prohibits the withholding or revoking of appointed counsel for failure to pay fees; and
- Prohibits incarceration of a party for failure to pay an indigent counsel fee or contribution fee.

The remaining revisions are intended to enhance the clarity and consistency of the Rule and to update it to conform to recent statutory requirements.

The full text of Rule 3:10 is available online here .

<http://www.mass.gov/courts/case-legal-res/rules-of-court/rule-changes-invitations-comment/amendments-to-sjc-rule-310-description-of-major-revisions.html>