

Standards Spotlight: Standard C

This article is the first in a series in which the Commission examines and discusses its Standards for Indigent Defense Services in Non-Capital Cases.

Members of the public may wonder when and under what conditions an individual is eligible to receive state-appointed counsel. Put differently, when is a person in a Commission county considered “indigent” for purposes of receiving a public defender? According to Standard C, “counsel will be provided to all persons who are financially unable to obtain adequate representation without substantial hardship to themselves or their families.”¹ In *Moore v. State*, the Indiana Supreme Court embraced the so-called “substantial hardship” test for determining indigency.² But what constitutes a “substantial hardship” and what, if any, are the factors probative of “indigency”?

Developments and Trends in Indiana Case Law

By and large, a sense of pragmatism guides the manner in which Indiana courts make indigency determinations. Indiana case law reflects an appreciation for the various factors and forces that contribute to a defendant’s stated inability to pay for an attorney. For starters, to be “indigent,” an individual need not be entirely destitute or without means to qualify for state-appointed counsel.³ Nor is a defendant’s ability to post bail⁴ or status as an employed person dispositive of indigency.⁵ Further, it is a well-established principle that when making an indigency determination, the trial court has an affirmative duty⁶ to evaluate the defendant’s “total financial picture,”⁷ which includes assets, income, debts, liabilities,⁸ obligations to children,⁹ and the extent to which the defendant’s financial status falls below Federal Poverty Guidelines.¹⁰ Although not married to its initial determination, the trial court must not change the defendant’s

¹ Standard C.

² *Moore v. State*, 273 Ind. 3, 7, 401 N.E.2d 676, 678 (Ind. 1980).

³ See *Bradford v. State*, 550 N.E.2d 1353, 1354 (Ind. Ct. App. 1990).

⁴ See *Graves v. State*, 503 N.E.2d 1258, 1262 (Ind. Ct. App. 1987) (reversing and remanding where defendant was denied counsel merely because he posted bond and where record demonstrated that he “was an unemployed student attending school on borrowed money and that his cousin posted his bail”); Standard C. 1 (a).

⁵ Standard C. 1 (b).

⁶ *Id.*

⁷ *Reese v. State*, 953 N.E.2d 1207, 1210 (Ind. Ct. App. 2011).

⁸ *Hardy v. State*, 436 N.E.2d 837 (Ind. Ct. App. 1982).

⁹ *Id.*

¹⁰ See *Hall v. State*, 826 N.E.2d 99 (Ind. Ct. App. 2005) (considering the 2005 Federal Poverty Guidelines); see also *Reese*, 953 N.E.2d at 1211 (considering the 2010 Federal Poverty Guidelines).

status absent a significant change in the defendant's financial status.¹¹ At bottom, a cursory or superficial review of a defendant's financial status is insufficient and frankly, frowned upon.¹²

As it turns out, then, indigency determinations are largely informed by objective factors—such as monetary obligations, debts, and liquidity of assets. While this remains true, according to *Gilmore v. State*, a defendant's indigency status alone does not guarantee his or her right to counsel.¹³ In *Gilmore*, a panel for the Indiana Court of Appeals affirmed that “indigency” depends upon the defendant's “financial condition, not his behavior.”¹⁴ Nevertheless, the defendant's behavior *might* be probative of whether an indigent defendant waived or forfeited that right due to his conduct.¹⁵

Consider a defendant that attempts to derail or delay his own prosecution, or one who refuses to cooperate with each attorney appointed to him to the extent that new counsel must be provided time and time again. In *Gilmore*, the court adopted the principle that “although a defendant has a right to competent, effective counsel, if indigent, he does not have the right to abuse it.”¹⁶ Relying upon United States Supreme Court precedent, the court elucidated that a “defendant can lose his right to be present at trial if, after he has been warned by the judge . . . he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.”¹⁷

Accordingly, even if indigent, a defendant can waive by conduct, or forfeit by knowledge, his or her right to counsel, but such must be done intelligently: it may only occur after the defendant was warned of the dangers and disadvantages of self-representation. If the defendant is aware of the inherent risks but persists in engaging in “obstreperous behavior,” then a defendant might be found to have waived his right to counsel.¹⁸

¹¹ See *Lamonte v. State*, 839 N.E.2d 172 (Ind. Ct. App. 2005).

¹² See *Mitchell v. State*, 417 N.E.2d 364, 368 (Ind. Ct. App. 1981) (“The determination . . . must be based on as thorough an examination of the defendant's total financial picture as is practical.”).

¹³ See *Gilmore v. State*, 953 N.E.2d 583 (Ind. Ct. App. 2011).

¹⁴ *Id.* at 588.

¹⁵ *Id.* at 589.

¹⁶ *Id.* at 592.

¹⁷ *Id.* (quoting *Illinois v. Allen*, 397 U.S. 337, 343 (1970)).

¹⁸ *Id.*