



LINDA LINGLE  
GOVERNOR  
  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH  
DIRECTOR  
  
RONALD BOYER  
DEPUTY DIRECTOR

POLICY TITLE: **Criteria for Evaluating Motions to Waive DCCP Filing Fees**  
DATE ISSUED: December 28, 2007  
EFFECTIVE DATE: January 1, 2008

### Introduction

This policy implements the policy and procedures utilized in evaluating ex parte motions to waive the filing fees for claims filed with the Design Claim Conciliation Panel ("DCCP").

### Legal Reference

Hawai'i Revised Statutes ("HRS") §672B-4 authorizes the Director of the Department of Commerce and Consumer Affairs to grant or deny motions to waive DCCP filing fees, and provides in relevant part:

**[§672B-4] Waiver of filing fee.** (a) If any party to a claim cannot pay the required filing fee, the party may file with the director a motion to waive the filing fee. The motion to waive the filing fee shall be accompanied by an affidavit in a format prescribed by the department, showing in detail:

- (1) The party's inability to pay the filing fee;
- (2) The party's belief that the party is entitled to redress; and
- (3) A statement of the issues that the party intends to present at the hearing before a design claim conciliation panel.

(b) The director shall decide on the motion to waive the filing fee as expeditiously as possible, and no oral arguments shall be permitted.

### Policy

In keeping with intent of HRS §672B-4, determinations as to whether a party to an DCCP claim is not financially capable of paying the required filing fees, shall be guided by the most current provisions of Rule 24, Hawai'i Rules of Appellate Procedure

(proceedings *in forma pauperis*), and Title 45 Code of Federal Regulations §1611 (eligibility guidelines to receive legal assistance from the Legal Services Corporation), copies of which are attached hereto, and by this reference incorporated herein.

This policy shall be effective as of January 1, 2008, shall be reviewed as needed by the Administrator of the MCCP program, and shall remain in effect until repealed.

LAWRENCE M. REIFURTH  
Director

# HAWAII RULES OF APPELLATE PROCEDURE

Adopted and Promulgated by the Supreme Court of the State of Hawai'i

## Rule 24. PROCEEDINGS IN FORMA PAUPERIS.

**(a) Leave to proceed on appeal in forma pauperis from the circuit, district, family, land or tax appeal court or from an agency determination to the Hawai'i appellate courts.** A party to an action in the circuit, district, family, land or tax appeal court, or before an administrative agency who desires to proceed on appeal in forma pauperis shall file in the court or agency a motion for leave to so proceed, together with an affidavit or declaration, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay the required filing fees or to give security for costs, the party's belief that he or she is entitled to redress, and a statement of the issues that the party intends to present on appeal. A party who has filed such a motion may file his or her notice of appeal without being required to prepay the filing fees. If the motion is granted, the party may proceed without further application to the appellate courts and without prepayment of fees or costs in any court or agency or the giving of security therefor. If the motion is denied, the court or agency appealed from shall state in writing the reasons for the denial. The court or agency appealed from shall promptly provide the appellate clerk with a filed copy of its order granting or denying the motion.

**(b) Effect of prior leave to proceed in forma pauperis.** Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in a court or agency in forma pauperis, or who has been permitted to proceed as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal in the same action in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the court or agency shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the court or agency shall state in writing the reasons for such certification or finding.

**(c) Motion for leave to proceed in forma pauperis before the appellate court.** If a motion for leave to proceed on appeal in forma pauperis is denied by the court or agency, or if the court or agency certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to proceed in forma pauperis, the clerk of the court shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the appellate court within 10 days after service of the notice of the action of the court or agency. The motion shall be accompanied by a copy of the affidavit or declaration filed in the court or agency, or by the affidavit or declaration prescribed in the first paragraph of this subsection if no affidavit or declaration has been filed in the court or agency, and by a copy of the statement of reasons given by the court or agency for its action.

**(d) Effect of denial of motion for leave to proceed in forma pauperis.** If the court or agency has denied a party the authority to proceed on appeal in forma pauperis, then within 10 days after the denial of such a motion filed in the appellate court or, if no such motion is filed in the appellate court, within 10 days after the expiration of the time to file such a motion in the appellate court, the movant shall pay all unpaid filing fees and shall give security for costs. Failure of the unsuccessful movant to pay the unpaid filing fees or to give security for costs shall not affect the validity of the appeal, but is ground for such action as the appellate court having jurisdiction over the appeal deems appropriate, which may include dismissal of the appeal.

*(Amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004; further amended June 20, 2006, effective July 1, 2006.)*

# Code of Federal Regulations

## Title 45, Volume 4

[Revised as of October 1, 2007]

### TITLE 45--PUBLIC WELFARE

#### CHAPTER XVI--LEGAL SERVICES CORPORATION

##### PART 1611\_FINANCIAL ELIGIBILITY--Table of Contents

###### Sec. 1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible. This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

###### Sec. 1611.2 Definitions.

(a) "Advice and counsel" means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) "Applicable rules of professional responsibility" means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) "Applicant" means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) "Assets" means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) "Brief services" means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) "Extended service" means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) “Governmental program for low income individuals or families” means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) “Governmental program for persons with disabilities” means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) “Income” means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

**Sec. 1611.3 Financial eligibility policies.**

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups. The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the Federal Register as a revision to Appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with Sec. 1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by

the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with Sec. 1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

- (1) The number of clients who can be served by the resources of the recipient;
- (2) The population that would be eligible at and below alternative income and asset ceilings; and
- (3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

**Sec. 1611.4 Financial eligibility for legal assistance.**

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this part, the recipient may determine an applicant to be financially eligible for legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to Sec. 1611.3(d)(1), or the applicable asset ceiling has been waived pursuant Sec. 1611.3(d)(2), and:

- (1) The applicant's income is at or below the recipient's applicable annual income ceiling; or
- (2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in Sec. 1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

**Sec. 1611.5 Authorized exceptions to the annual income ceiling.**

(a) Consistent with the recipient's policies and this Part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to Sec. 1611.3(d), or the asset ceiling has been waived pursuant to Sec. 1611.3(d)(2), and:

- (1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or
- (2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or
- (3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:
  - (i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or
  - (ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or
- (4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:
  - (i) Current income prospects, taking into account seasonal variations in income;
  - (ii) Unreimbursed medical expenses and medical insurance premiums;
  - (iii) Fixed debts and obligations;
  - (iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
  - (v) Non-medical expenses associated with age or disability;
  - (vi) Current taxes; or

- (vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

**Sec. 1611.6 Representation of groups.**

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

- (1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or
- (2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

- (i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or
- (ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

- (2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

**Sec. 1611.7 Manner of determining financial eligibility.**

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income



prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

- (2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in Sec. 1611.6(b) of this part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in Sec. 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

**Sec. 1611.8 Change in financial eligibility status.**

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

**Sec. 1611.9 Retainer agreements.**

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

#### Appendix A of Part 1611--Legal Services Corporation 2006 Poverty Guidelines <sup>1\</sup>

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1 .....	\$12,763.....	\$15,963 .....	\$14,688
2 .....	17,113 .....	21,400 .....	19,688
3 .....	21,463.....	26,838 .....	24,688
4 .....	25,813.....	32,275 .....	29,688
5 .....	30,163 .....	37,713 .....	34,688
6 .....	34,513.....	43,150 .....	39,688
7 .....	38,863.....	48,588 .....	44,688
8 .....	43,213.....	54,025 .....	49,688
For each additional member of the household in excess of 8, add: .....	4,350.....	5,438 .....	5,000

<sup>1\</sup> The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

#### Reference Chart--200% of DHHS Federal Poverty Guidelines

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1 .....	\$20,420.....	\$25,540 .....	\$23,500
2 .....	27,380.....	34,240 .....	31,500
3 .....	34,340.....	42,940 .....	39,500
4 .....	41,300.....	51,640 .....	47,500
5 .....	48,260.....	60,340 .....	55,500
6 .....	55,220.....	69,040 .....	63,500
7 .....	62,180.....	77,740 .....	71,500
8 .....	69,140.....	86,440 .....	79,500
For each additional member of the household in excess of 8, add:.....	6,960.....	8,700 .....	8,000

[72 FR 8114, Feb. 23, 2007]