

## FREQUENTLY ASKED QUESTIONS ABOUT WAIVERS FOR COURT-APPOINTED COUNSEL:

### **Can I apply for a waiver in every case?**

Generally, court-appointed attorneys representing indigent defendants in criminal matters are eligible to apply for waivers. [Form DC-40\(A\)](#), APPLICATION AND AUTHORIZATION FOR WAIVER OF FEE CAP, must be completed for each charge for which a waiver is being sought, and submitted to the court with [Form DC-40](#), LIST OF ALLOWANCES, and an [Attorney Time Sheet](#). For specific information on waiver amounts and the types of cases and courts where such waivers may be requested, please see the chart on page two of [Form DC-40\(A\)](#).

### **If I was appointed by the juvenile and domestic relations district court in a civil matter (such as a termination of parental rights, CHINS, or abuse and neglect case), am I eligible to apply for a waiver?**

No, only attorneys appointed to represent indigent adults or juveniles in criminal matters may apply for waivers.

### **How much additional compensation can I receive with a waiver?**

For specific information on waiver amounts and the types of cases and courts where such waivers may be requested, please see the chart on page two of [Form DC-40\(A\)](#).

### **What is the difference between the two levels of waivers?**

The first-level waivers are limited to the amounts specified in the statute and only need to be approved by the presiding judge. The second-level waivers are not limited in amount and must be approved by both the presiding judge and the chief judge.

### **Who approves the waivers?**

A first-level waiver must be approved by the presiding judge. A second-level waiver must be approved by both the presiding judge and the chief judge.

### **When I request a first-level waiver, can the judge award less than the amount specified in the statute?**

Yes, Virginia Code § [19.2-163](#) provides that the court may award up to the additional amounts specified for the first-level waivers.

### **How do I apply for a waiver?**

To apply for a waiver, you must complete both [Form DC-40](#), LIST OF ALLOWANCES and [Form DC-40\(A\)](#), APPLICATION OF AUTHORIZATION FOR WAIVER OF FEE CAP, and submit them to the clerk of the court in which the case was concluded along with an [Attorney Time Sheet](#). A separate [Form DC-40\(A\)](#), APPLICATION AND AUTHORIZATION FOR WAIVER OF FEE CAP, must be submitted for each charge for which you are seeking a waiver. The reason for the request for waiver must be explained on [Form DC-40\(A\)](#).

**When do I apply for a waiver?**

You may apply for a waiver once the case is concluded. The required paperwork must be submitted to the court within 30 days of the conclusion of the case.

**What criteria will the court use in deciding whether to grant my request for waiver?**

In determining whether to grant a waiver, the court will consider the effort expended by the attorney, the time reasonably necessary for the representation, the novelty and difficulty of the issues, or other circumstances that may justify a waiver. In accordance with Virginia Code § [19.2-163](#), the Executive Secretary also issued [guidelines](#) that include examples of factors that courts should consider in making the determination.

**What if my request for waiver is denied – can I appeal?**

No. There is no appeal process available if an application for waiver of fee cap is denied.

**Does the funding allocated by the General Assembly to pay for waivers of the statutory fee caps apply to local charges?**

No, the General Assembly's allocation only applies to state charges.

**What if the waiver funding runs out?**

Virginia Code § [19.2-163](#) provides that if at any time the funds allocated for the waivers are exhausted, the Executive Secretary is to certify that fact to the courts, and no additional waivers may be granted. However, every court across the state has been provided with a budget estimate for its projected portion of the waiver funds. These guideline budget estimates have been developed based on past expenditures from the Criminal Fund by each court. Monthly reports of expenditures for waivers will be provided to each court.

**Will my client be billed for the additional amount if the court grants my request for waiver?**

No. In any case where a waiver has been requested, the defendant will only be assessed attorney's fees equal to the statutory cap for the applicable charge.

**Do I have to complete an attorney time sheet for every case?**

An [Attorney Time Sheet](#) is required only when a request for waiver is submitted. It must be attached to the [DC-40](#) and [DC-40\(A\)](#) when they are submitted to the court. However, for cases where a waiver is not being requested, "a detailed accounting of the time expended" is still required pursuant to amendments to Virginia Code § [19.2-163](#) in order for you to be compensated for your services as a court-appointed attorney. At a minimum, actual hours spent on each charge must be specified on the [DC-40](#) even when a waiver is not being requested.

**If I represent a defendant charged with a felony in district court and have the charge reduced to a misdemeanor in district court, what first-level waiver amount am I eligible to apply for?**

Counsel who has a felony reduced to a misdemeanor in district court is eligible to apply for the felony waiver amount based on the type of felony initially charged, which is up to \$155 for a Class III through VI felony and up to \$850 for a Class II felony.

**Why do I have to specify actual hours spent per charge on the DC-40?**

This information is essential to accurately project the cost of funding any increase to or elimination of the statutory fee caps.

**What first-level waiver amount is applicable if I am representing a juvenile charged with an offense that would be a felony if committed by an adult?**

The first-level waiver amount for all delinquency cases in juvenile and domestic relations district court is \$120.