

COURT NOTICES

AMENDMENT OF RULE

Rules of the Chief Administrator of the Courts

Pursuant to the authority vested in me, and upon consultation with the Administrative Board of the Courts, I hereby amend, effective immediately, subdivision (b) of section 138.3 of the Rules of the Chief Administrator of the Courts (22 NYCRR § 138.3(b)), and add a new subdivision (e) to such section, to read as follows:

(b) When and Where to Apply. For a town or village to be eligible for a disbursement from funds made available by appropriation to the Unified Court System for [the 1999-2000 State fiscal year, it must file its application therefor with the Chief Administrator on or before December 1, 1999; and for the 2000-2001 State fiscal year, it must file its application on or before May 1, 2000. To be eligible for a disbursement from funds made available by appropriation for] any [subsequent] State fiscal year, [a] such town or village must file its application with the Chief Administrator on or before the first day of May [preceding commencement of] in such fiscal year. [Once an application is filed, it will remain active for two consecutive State fiscal years.]

* * *

(e) *Emergency applications. Notwithstanding the provisions of subdivision (b) of this section, a town or village having a justice court may file an application for a disbursement from Justice Court Assistance Program funds at any time after the first day of May in the State fiscal year in which such funds are made available by appropriation to the Unified Court System, provided:*

(1) *the town or village has not filed any other application for such a disbursement during such State fiscal year; and*

(2) *the justice or justices signing the application certify that the need for funding arose on or after such first day of May.*

Except as otherwise noted herein, all provisions of this section shall apply to any application filed pursuant to this subdivision.

AMENDMENT OF RULE

Uniform Rules for Courts Exercising Criminal Jurisdiction

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby add, effective immediately, a new section 200.25 to Subpart C of Part 200 of the Uniform Rules for Courts Exercising Criminal Jurisdiction, relating to assignment of counsel in town and village courts, to read as follows:

§200.25 Issuance of certain securing orders in town and village courts; duties of the court; assignment of and notification to counsel; notification to pretrial services agency

(a) *Where, following an arrest, a defendant is brought, pursuant to CPL §120.90, 140.20 or 140.27, before a town or village court for arraignment on an accusatory instrument filed with such court, counsel for the defendant shall be given an opportunity to be heard before the court issues a securing order fixing bail or committing the defendant to the custody of the sheriff.*

(b) *If the defendant appears at such time without counsel, the court shall:*

(i) *permit the defendant to communicate free of charge by telephone for the purposes of obtaining counsel and informing a relative or friend that he or she has been charged with an offense.*

(ii) *prior to issuing a securing order fixing bail or committing the defendant to the custody of the sheriff, make an initial determination as to the defendant's eligibility for assigned counsel, provided, however, that this paragraph, as well as subdivisions (c) and (d) of this section, shall not apply where the court determines that the defendant has sufficient funds available to him or her to immediately post bail with the court in the amount and form to be fixed by the court, and such bail is so posted with the court.*

(c) *Where it appears, pursuant to paragraph (ii) of subdivision (b) of this section, that the defendant is financially unable to obtain counsel, the court shall, prior to issuing a securing order fixing bail or committing the defendant to the custody of the sheriff, assign counsel. Such assignment shall be in accordance with the plan for representation adopted by the county pursuant to County Law §722, and shall, in accordance with such plan: (i) direct the administrator of the assigned counsel program to, without delay, select and assign to the defendant, subject to the court's approval, an appropriate attorney from the administrator's list of eligible attorneys; (ii) direct the local public defender office or legal aid society to represent the defendant; or (iii) designate a named attorney to represent the defendant. Where assigned counsel is not present in court at the time of the assignment, the court may issue such securing order in the absence of counsel, and in such case shall provide the defendant, in writing, with the name, business address and telephone number of such assigned counsel, or of the administrator of the assigned counsel program or director of the local public defender office or legal aid society, as appropriate. Upon issuing such securing order in the absence of counsel, or, if not practicable, within 24 hours thereafter, but no later than 48 hours thereafter if extraordinary circumstances so require, the court shall notify such counsel, administrator or director, as well as the director of the local pretrial services agency or head of the pretrial services unit of the county probation department, if any, by telephone, and in writing or by written fax, of the court's assignment, and shall include in such notification the defendant's name, the names of any codefendants, the charge or charges contained in the accusatory instrument, the docket or case number, if available, the adjourn date and time, the terms of the securing order and such other information as the court deems appropriate. The court shall include with such written or faxed notification to such counsel, administrator of the assigned counsel program or director of the local public defender office or legal aid society a copy of the accusatory instrument.*

(d) *Where it appears, pursuant to paragraph (ii) of subdivision (b) of this section, that the defendant is financially able to retain counsel, the court shall inquire whether the defendant intends to retain counsel, and whether there is a particular attorney the defendant intends to retain. If the defendant identifies a particular attorney he or she intends*

to retain, the court shall, where such information is readily available, provide the defendant, in writing, with the telephone number of such attorney. Where the defendant does not identify a particular attorney, or where the attorney so identified is not present in court at the time the court intends to issue the securing order fixing bail or committing the defendant to the custody of the sheriff, the court may issue such securing order in the absence of counsel. Upon issuing such securing order in the absence of counsel, or, if not practicable, within 24 hours thereafter, but no later than 48 hours thereafter if extraordinary circumstances so require, the court shall notify the director of the local pretrial services agency or head of the pretrial services unit of the county probation department, if any, and the administrator of the assigned counsel program or director of the local public defender office or legal aid society, as appropriate, by telephone, and in writing or by written fax, of the defendant's appearance before the court and of the court's preliminary determination that the defendant appears to be financially able to retain counsel. Such notification shall also include the defendant's name, the names of any codefendants, the charge or charges contained in the accusatory instrument, the docket or case number, if available, the adjourn date and time, the terms of the securing order and such other information as the court deems appropriate. The court shall include with such written or faxed notification to the administrator of the assigned counsel program or director of the local public defender office or legal aid society a copy of the accusatory instrument.

(e) Each town and village court shall obtain from the administrator of the assigned counsel program, public defender, legal aid society or other provider of indigent criminal defense legal services in that jurisdiction, and from the director of the local pretrial services agency or head of the pretrial services unit of the county probation department, if any, the names, addresses, telephone numbers and fax numbers required to effectuate the notification provisions of subdivisions (c) and (d) of this section.

(f) Nothing contained in this section shall be deemed to preclude the court from:

(i) terminating an assignment of counsel made pursuant to subdivision (c) of this section in accordance with the provisions of County Law §722-d; or

(ii) issuing a securing order releasing the defendant on his or her own recognizance in accordance with CPL §170.70, 180.80 or any other relevant provision of the Criminal Procedure Law; or

(iii) issuing a securing order releasing the defendant on bail or on his or her own recognizance in accordance with CPL §30.30(2); or

(iv) entertaining an application for recognizance or bail made pursuant to CPL §510.20.

(g) Nothing contained in this section shall be deemed to relieve the court of any obligation imposed pursuant to CPL §§170.10 and 180.10.

(h) Each town and village court shall maintain a record in the case file of any communications and correspondence initiated or received by the court pursuant to this section, and shall make such records available to the defendant's counsel and the prosecutor upon request.

(i) The Office of Court Administration shall prepare and distribute to each town and village court such forms as may be necessary to implement the notification provisions of this section.