

CODE OF CIVIL PROCEDURE

ARTICLE V COSTS

735 ILCS 5/5-105 (from Ch. 110, par. 5-105) (Text of Section after amendment by P.A. 100-987 and 100-1161)

Sec. 5-105. Waiver of court fees, costs, and charges.

(a) As used in this Section:

(1) "Fees, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: fees set forth in Section 27.1b of the Clerks of Courts Act; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; charges for participation in, or attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action.

(2) "Indigent person" means any person who meets one or more of the following criteria:

(i) He or she is receiving assistance under one or more of the following means-based governmental public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), General Assistance, Transitional Assistance, or State Children and Family Assistance.

(ii) His or her available personal income is 125% or less of the current poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the fees, costs, and charges.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5-105.5 of this Code.

(3) "Poverty level" means the current poverty level as established by the United States Department of Health and Human Services.

(b) On the application of any person, before or after the commencement of an action:

(1) **If the court finds that the applicant is an indigent person, the court shall grant the applicant a full fees, costs, and charges waiver** entitling him or her to sue or defend the action without payment of any of the fees, costs, and charges.

(2) If the court finds that the applicant satisfies any of the criteria contained in items (i), (ii), or (iii) of this subdivision (b)(2), **the court shall grant the applicant a partial fees, costs, and charges waiver** entitling him or her to sue or defend the action upon payment of the applicable percentage of the assessments, costs, and charges of the action, as follows:

(i) **the court shall waive 75% of all fees, costs, and charges if the available income of the applicant is greater than 125% but does not exceed 150%** of the poverty level, unless the assets of the applicant that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of the fees, costs, and charges;

(ii) **the court shall waive 50% of all fees, costs, and charges if the available income is greater than 150% but does not exceed 175%** of the poverty level, unless the assets of the applicant that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without

undue hardship, to pay a greater portion of the fees, costs, and charges; and
(iii) **the court shall waive 25% of all fees, costs, and charges if the available income of the applicant is greater than 175%** but does not exceed 200% of the current poverty level, unless the assets of the applicant that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of the fees, costs, and charges.

(c) An application for waiver of court fees, costs, and charges shall be in writing and signed by the applicant, or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The contents of the application for waiver of court fees, costs, and charges, and the procedure for the decision of the applications, shall be established by Supreme Court Rule. **Factors to consider in evaluating an application shall include:**

- (1) the applicant's receipt of needs based governmental public benefits, including Supplemental Security Income (SSI); Aid to the Aged, Blind and Disabled (ADBID); Temporary Assistance for Needy Families (TANF); Supplemental Nutrition Assistance Program (SNAP or "food stamps"); General Assistance; Transitional Assistance; or State Children and Family Assistance;
- (2) the employment status of the applicant and amount of monthly income, if any;
- (3) income received from the applicant's pension, Social Security benefits, unemployment benefits, and other sources;
- (4) income received by the applicant from other household members;
- (5) the applicant's monthly expenses, including rent, home mortgage, other mortgage, utilities, food, medical, vehicle, childcare, debts, child support, and other expenses; and
- (6) financial affidavits or other similar supporting documentation provided by the applicant showing that payment of the imposed fees, costs, and charges would result in substantial hardship to the applicant or the applicant's family.

(c-5) The court shall provide, through the office of the clerk of the court, the application for waiver of court fees, costs, and charges to any person seeking to sue or defend an action who indicates an inability to pay the fees, costs, and charges of the action. The clerk of the court shall post in a conspicuous place in the courthouse a notice no smaller than 8.5 x 11 inches, using no smaller than 30-point typeface printed in English and in Spanish, advising the public that they may ask the court for permission to sue or defend a civil action without payment of fees, costs, and charges. The notice shall be substantially as follows:

If you are unable to pay the fees, costs, and charges of an action you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."

(d) (Blank).

(e) The clerk of the court shall not refuse to accept and file any complaint, appearance, or other paper presented by the applicant if accompanied by an application for waiver of court fees, costs, and charges, and those papers shall be considered filed on the date the application is presented. If the application is denied or a partial fees, costs, and charges waiver is granted, the order shall state a date certain by which the necessary fees, costs, and charges must be paid. For good cause shown, the court may allow an applicant who receives a partial fees, costs, and charges waiver to defer payment of fees, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order. The court may dismiss the claims or strike the defenses of any party failing to pay the fees, costs, and charges within the time and in the manner ordered by the court. A judicial ruling on an application for waiver of court assessments does not constitute a decision of a substantial issue in the case under Section 2-1001 of this Code.

(f) The order granting a full or partial fees, costs, and charges waiver shall expire after one year. Upon expiration of the waiver, or a reasonable period of time before expiration, the party whose fees, costs, and charges were waived may file another application for waiver and the court shall consider the application in accordance with the applicable Supreme Court Rule.

(f-5) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person whose fees, costs, and charges were initially waived was not entitled to a full or partial waiver at the time of application, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the initial waiver might be reconsidered. The court may require the applicant to provide reasonably available evidence, including financial information, to support his or her eligibility for the waiver, but the court shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subdivision (b)(1) or (b)(2) of this Section. If the court finds that the person was not initially entitled to any waiver, the person shall pay all fees, costs, and charges relating to the civil action, including any previously waived fees, costs, and charges. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing under this subsection more often than once every 6 months.

(f-10) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person who received a full or partial waiver has experienced a change in financial condition so that he or she is no longer eligible for that waiver, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the waiver might be reconsidered. The court may require the person to provide reasonably available evidence, including financial information, to support his or her continued eligibility for the waiver, but shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subdivisions (b)(1) and (b)(2) of this Section. If the court enters an order finding that the person is no longer entitled to a waiver, or is entitled to a partial waiver different than that which the person had previously received, the person shall pay the requisite fees, costs, and charges from the date of the order going forward. The order may state terms of payment in accordance with subsection (e) of this Section. The court shall not conduct a hearing under this subsection more often than once every 6 months.

(g) A court, in its discretion, may appoint counsel to represent an indigent person, and that counsel shall perform his or her duties without fees, charges, or reward.

(h) Nothing in this Section shall be construed to affect the right of a party to sue or defend an action in forma pauperis without the payment of fees, costs, charges, or the right of a party to court-appointed counsel, as authorized by any other provision of law or by the rules of the Illinois Supreme Court. Nothing in this Section shall be construed to limit the authority of a court to order another party to the action to pay the fees, costs, and charges of the action.

(h-5) If a party is represented by a civil legal services provider or an attorney in a court-sponsored pro bono program as defined in Section 5-105.5 of this Code, the attorney representing that party shall file a certification with the court in accordance with Supreme Court Rule 298 and that party shall be allowed to sue or defend without payment of fees, costs, and charges without filing an application under this Section.

(h-10) (Blank)

(i) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 100-987, eff. 7-1-19; 100-1161, eff. 7-1-19.) *Emphasis Added*

**ARTICLE II. RULES ON CIVIL PROCEEDINGS
IN THE TRIAL COURT
Rule 298. Application for Waiver of Court Fees**

(a) Contents. An Application for Waiver of Court Fees in a civil action pursuant to 735 ILCS 5/5-105 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for full or partial waiver of assessments fees pursuant to 735 ILCS 5/5-105, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets.

(2) Applicants shall use the "Application for Waiver of Court Fees" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in the Article II Forms Appendix.

(b) Ruling. The court shall either enter a ruling on the Application or ~~shall~~ set the Application for a hearing requiring the applicant to ~~personally~~ appear in person, a timely manner. The court may order the applicant to produce copies of specified certain documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Court Fees shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect ~~stating the specific~~ specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it Application is granted, the court shall enter an order permitting the applicant to sue or defend without payment of assessments, fees, costs or charges. If the court determines that the conditions for a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court Fees. The clerk must allow an applicant to file an Application for Waiver of Court Fees in the court where his case will be heard.

(d) Cases involving representation by civil legal services provider or lawyer in court-sponsored pro bono program. In any case where a party is represented by a civil legal services provider or attorney in a court-sponsored *pro bono* program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court, and that the party shall be allowed to sue or defend without payment of assessments, fees, costs or charges as defined in 735 ILCS 5/5-105(a)(1) without necessity of an Application under this rule. Instead, the attorney representing the party shall file a certification prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

Amended October 20, 2003, effective November 1, 2003; amended September 25, 2014, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Feb. 13, 2019, eff. July 1, 2019.