

(This is an entirely new rule.)

Rule 1990. Application to Waive Fees and Costs (*In Forma Pauperis*)

- (a) **Scope.** To the extent authorized by procedural rule, this rule shall govern the procedure for waiving the initial filing fee and such other fees and costs associated with a legal action:
 - (1) imposed or authorized by an Act of Assembly or general rule, and payable to a court, filing office, or public officer or employee; or
 - (2) required for the posting of a bond or other security for costs as a condition for commencing a legal action.
- (b) **Information.** If a party is unable to pay the initial filing fee and such other fees and costs associated with a legal action, the payee shall provide the party with information about seeking a waiver of fees and costs pursuant to this rule.
- (c) **Eligibility.** A party may seek a waiver of the initial filing fee and such other fees and costs associated with a legal action on any of the following bases:
 - (1) **Without Financial Resources.** A party seeking a waiver shall complete and submit an application so the court can determine whether the party is without financial resources to pay the fees and costs associated with the legal action. A party shall be deemed without financial resources if the party:
 - (i) Receives needs-based public assistance (including, but not limited to, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), or Temporary Assistance to Needy Families (TANF)); or
 - (ii) Meets the following income and asset requirement:
 - (I) gross income (*i.e.*, before taxes and other deductions) that is 200% or less than the federal poverty guidelines for the party's household size; and
 - (II) assets less than \$10,000, excluding the party's home and one vehicle.

(2) **Substantial Financial Hardship.** A party seeking a waiver shall complete and submit an application so the court can determine whether the party will suffer a substantial financial hardship, which means the party is or will be unable to fully meet their basic human needs or obligations including, but not limited to, nutrition, housing, utilities, health, transportation, care of dependents, or other areas of essential need, by paying the fees and costs associated with the legal action based upon:

- (i) the party's gross income, assets, and expenses;
- (ii) the number of minor children or adult children, who are incapable of self-support due to a physical or mental disability, that the party is supporting, including a child support obligation;
- (iii) employment history;
- (iv) other available financial resources, including resources from individuals who have a duty of support to the party; and
- (v) other factors affecting the party's income, assets, or expenses.

(3) **Representation of Counsel.** A party represented by counsel practicing in a legal aid organization or providing the party with free legal services shall receive a waiver from the filing office upon *praecipe* of counsel stating that counsel reasonably believes the party is unable to pay the fees and costs associated with the legal action.

(d) **Timing.**

- (1) The application or *praecipe* shall be filed at the same time as or after the commencement of the legal action, not before.
- (2) The filing office shall docket the legal action and the application or *praecipe* without the party paying the filing fee.
- (3) If the court denies the application, the party shall pay the filing fee for commencing the action within 30 days of notification of the denial. The party may not proceed in the action, so long as the fee remains unpaid, except that the party may appeal the denial or obtain

permission from the court to proceed.

- (4) If a party commences an action and later files an application or *praecipe* to waive fees and costs, the filing office shall not refund the fees and costs previously paid.
- (e) **Court Action.** The court or an individual designated by the court shall review all applications to determine immediate eligibility. The court should enter its order determining the application within 20 days of its filing date.
- (1) If a party is deemed eligible for a waiver, the court shall grant the application without a hearing.
 - (2) If the court cannot determine eligibility solely on the application, then the court may direct the party to submit supplemental information to complete or substantiate the application.
 - (3) The court may deny an application without argument or a hearing.
 - (4) The court may hold an *ex parte* record hearing if the application is of arguable merit or the court wishes to solicit further information.
 - (5) The court may vacate its order granting an application if the court later finds that the application or supplemental information was materially inaccurate or the party is able to pay the fees and costs.
 - (6) If the court denies an application, or modifies or vacates an order previously granting an application, the court shall state in its order:
 - (i) the reason for its decision; and
 - (ii) that the party has 30 days to pay the filing fees or the action will be terminated without further notice.
 - (7) Upon *praecipe* of counsel pursuant to subdivision (c)(3), a party shall be deemed to have received a waiver without further action of the court.
- (f) **Notice. Termination. Reinstatement.**
- (1) The filing office shall serve the court's order upon the party.

- (2) If at least 30 days have passed after the filing office has served an order denying the application, the fee remains unpaid, and an appeal has not been filed, the filing office shall enter an appropriate order terminating the legal action.
- (3) The court may reinstate the legal action for good cause shown.

(g) **Recovery of Fees and Costs.**

- (1) If the party receiving a waiver obtains a money judgment or settlement, the court shall order the party paying the judgment or settlement to pay the previously waived fees and costs to the filing office as part of the litigation's taxed costs.
- (2) Under no circumstances shall taxed costs for the waived fees and costs be paid to the party who has received a waiver.

(h) **Continuing Obligation and Waiver.**

- (1) A party or counsel receiving a waiver of fees and costs has a continuing obligation to inform the court of an improvement in the party's financial circumstances that would enable the party to pay any waived fees and costs.
- (2) A waiver obtained on the basis of subdivision (c)(1) or (c)(2) shall continue throughout the litigation of the legal action, including any appeals, unless the duration of the waiver is specifically limited in the order granting the waiver or the order is modified or vacated by a subsequent order.
- (3) A court may order a party to re-apply for a waiver on the basis of subdivision (c)(1) or (c)(2) and modify or vacate an existing waiver.
- (4) Subject to subdivision (h)(1), a waiver obtained on the basis of subdivision (c)(3) shall continue throughout the litigation of the legal action regardless of whether counsel withdraws.

- (i) **Application Form.** The application required by subdivision (c) shall be substantially in the following form:

(Caption)

\$ _____ monthly gross wages. I work as a _____ *(job title/description)* for
_____ *(name of employer)*.

\$ _____ unemployment compensation. I have been unemployed since
_____ *(date)*. My last employer was _____ *(name of employer)*.

\$ _____ money received from other people.

\$ _____ Retirement/Pension Disability
 Workers Comp Social Security
 Child/Spousal support Other sources:
_____ *(describe sources)*

\$ _____ Total monthly gross income

ASSETS (Current Value):

\$ _____ Cash

\$ _____ Bank accounts or other financial assets

\$ _____ Primary vehicle

\$ _____ Other vehicles

\$ _____ House

\$ _____ Other real estate

\$ _____ Other property: _____ *(describe)*

\$ _____ Total value of property

MONTHLY EXPENSES YOU PAY:

\$ _____ Rent/mortgage payment

\$ _____ Food and household supplies

\$ _____ Utilities, including cell phone

\$ _____ Clothing and other personal expenses

\$ _____ Medical and dental expenses/insurance

\$ _____ Child care

\$ _____ Transportation, including car payments and repairs

\$ _____ Child and spousal support or alimony

\$ _____ Other expenses: _____ *(describe)*

\$ _____ Total monthly expenses

Are there other facts that you would like the court to know about your circumstances that may help the court decide whether to grant your application, such as you are experiencing homelessness or you have health issues?

VERIFICATION

I understand that I have a continuing obligation to inform the court of an improvement in my financial circumstances that would permit me to pay the fees and costs in this case. If I fail to inform the court of any changes in my circumstances, I understand that the court may rescind the waiver of fees and costs and order me to pay those fees and costs.

I verify that the statements made in this application are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____ Date _____ Party's Signature

- (j) ***Praecipe Form.*** The *praecipe* required by subdivision (c)(3) shall be substantially in the following form:

(Caption)

PRAECIPE TO WAIVE FEES AND COSTS

Kindly allow _____ to proceed without paying fees and costs.

I, _____, am the attorney for the party requesting a waiver of fees and costs, providing free legal services to the party, and reasonably believe the party is unable to pay the fees and costs.

Attorney for _____

Comment: This rule is intended to establish criteria and procedures for the application and *praecipe* seeking a waiver of fees and costs for indigent parties that would otherwise operate to limit access to the courts. See Pa. Const. art. I, § 11. The type of legal action, fees, and costs to which this rule applies is determined by procedural rule.

For a waiver of transcript fees, see Pa.R.J.A. 4007(E) and 4008(B).

The information required pursuant to subdivision (b) to be given to a party unable to pay the initial filing fee and such other fees and costs associated with a legal action is located at: <https://www.pacourts.us/forms/for-the-public>. “Payee,” as used in subdivision (b), means persons or entities collecting a fee under the scope of this rule, including, but not limited to, magisterial district court staff, clerks of courts, prothonotaries, court reporters, or sheriffs.

A party represented by counsel providing the party with free legal services in subdivision (c)(3) is intended to include public defenders and court-appointed counsel.

The judicial determination of an application is *ex parte*, see subdivision (e)(4). As such, the party is not required to serve the application on any other party. Nothing in this rule is intended to provide standing to any other party to participate in the determination of an application. Notwithstanding, the application and order are publicly accessible at the filing office pursuant to the *Case Records Public Access*

Policy of the Unified Judicial System of Pennsylvania.

“Record hearing,” as used in subdivision (e)(4), is intended to include a record of proceedings or a certified copy of a record of proceedings in magisterial district court pursuant to Pa.R.Civ.P.M.D.J. 205 (pertaining to record of proceedings and transcript of records). This includes an order entered by a magisterial district judge following a hearing to determine a party’s eligibility to have fees and costs waived.

Counsel filing a *praecipe*, as permitted by subdivision (c)(3), has a continuing obligation under subdivision (h)(1) to advise the court of any material improvement in the party’s financial circumstances that would enable the party to pay any waived fees and costs, unless permitted to withdraw.

An order denying an application that puts a party “out of court” is a final, appealable order. See *Grant v. Blaine*, 868 A.2d 400 (Pa. 2005). An appeal of magisterial district judge’s denial of an application should proceed in accordance with Pa.R.Civ.P.M.D.J. 1016-1020. All other appeals should proceed in accordance with Pa.R.A.P. 1614 (petition for specialized review).