

Affidavit of Indigency

REPRESENTING
YOURSELF
IN AN
EVICTION
CASE

If you cannot afford the cost of defending an eviction, bringing a lawsuit, or appealing your case, you may be eligible to have the state pay for court fees and costs.

You can use the forms in this booklet to ask the court to have the state pay court fees and costs. **The instructions and forms in this booklet are based on documents that were issued by the Massachusetts Supreme Judicial Court on May 5, 2003 and are being used by all courts in Massachusetts.**

In addition to the instructions included in this booklet, the Supreme Judicial Court also issued separate instructions to court staff which are not in this booklet, but in summary state that:

- ✓ Courts must accept and process all court papers without delay, even if you have not yet obtained a waiver of a filing fee.
- ✓ If you are applying under Category A or B on the Affidavit of Indigency form and asking for a waiver of normal costs, a clerk (not judge) must approve your application without delay as long as your Affidavit raises no significant questions about whether you are indigent.
- ✓ If you are applying under Category C on the Affidavit of Indigency form, unless there is a serious question about whether you meet the standard in Category C, a clerk can approve your application without going to a judge.
- ✓ A clerk should not require that you complete a Supplement to the Affidavit form unless you are applying under Category C.
- ✓ You may be ordered to by a judge to pay a partial fee. But only a judge, not a clerk, can make such a determination after considering the totality of your economic circumstances.

Finally, also included in this booklet are the Federal Poverty Guidelines to help you determine whether you are eligible.

BOOKLET

9

Instructions for Users of Affidavit of Indigency and Its Supplement

A state statute provides that if you cannot pay for court fees or costs, you may be able to have the state pay for them. These instructions describe who is eligible and how to use this law.

Who Is Eligible?

You are eligible for a waiver, substitution or state payment of fees and costs if any one of the following applies to you:

Category (A)

You receive public assistance under one of the following programs:
Massachusetts Transitional Aid to Families With Dependent Children;
Massachusetts Emergency Aid to Elderly, Disabled & Children;
Federal Supplemental Security Income;
Massachusetts MassHealth (formerly Medicaid) or
Massachusetts Veterans Benefits; or

Category (B)

Your income, after taxes, does not exceed 125% of the current Federal Poverty Guideline. This Poverty Guideline is revised annually. (See the chart included after these instructions.) A current chart should also be posted in your local courthouse. If you do not find it there, please ask the clerk's office where it is or for a copy; or

Category (C)

You cannot pay the court fees or costs without depriving yourself or those who are dependent on you of the necessities of life, including food, shelter and clothing.

If you are currently confined in prison or jail and do not seek your immediate release but are suing a "state or county agency, official or employee" about something "arising out of or resulting from a condition of or occurrence during confinement," **and** you are seeking court payment of "normal" costs (see definition below), please get from the clerk's office separate forms for prisoners which you must complete in order to qualify for a waiver. You can use the general forms for non-prisoners if you are asking the court to pay for "extra" fees. Regardless of which forms you use, you might find the information below useful.

What Fees and Costs Are Covered?

All fees and costs (other than attorneys' fees) involved in the prosecution or defense of "any civil, criminal or juvenile proceeding or appeal in any court" are eligible for waiver, substitution, or payment by the Commonwealth. When you prepare your application, please identify those costs which you need waived or paid for the initial or next steps of your court case. For example, if you are filing a case in court and you need a waiver of the court filing fee, prepare an application for waiver of that fee. If, in addition, you need to have a sheriff or other officer serve court process, or you need publication of notice, include your estimates of these costs also. If, at a later time, you need waiver or payment of other court costs (such as costs for subpoenas of witnesses to hearings, costs of taking depositions of witnesses, etc.), you should make a separate application at that time.

The fees and costs which can be waived or paid by the state are divided into two categories:

- (1) **Normal** fees and costs are those that "a party normally is required to pay in order to prosecute or defend the particular type of proceeding." They include, for example:
 - Court filing fees and surcharges, and also appeal fees and surcharges.
 - Other court fees for issuing or certifying papers or for photocopies.
 - Constable or sheriff fees for serving court process, witness subpoenas, or other court papers.
 - Costs of publishing notices relating to a court action.

If you are requesting only normal fees and costs, and your Affidavit appears regular and complete on its face and indicates that you are indigent, the clerk will allow your request immediately "without hearing and without the necessity of appearance of any party or counsel. The clerk will *waive* the fees or costs completely, order them to be paid by the Commonwealth, or substitute "an alternative means at lower or no cost [that] is "substantially equivalent and . . . does not materially impair the rights of any party." If your Affidavit is not regular and complete or you do not appear to be indigent, the clerk-magistrate will promptly present your request to a judge for decision within five days. Either the judge will grant your request without a hearing or you will be notified of a hearing date.

If you are a prisoner, a judge will need to act on your application after first ordering the facility where you are confined to produce a copy of your canteen account for the last six months. You may ask the court to order payment of the cost of serving the summons and complaint in the meantime, however, so your case can begin.

- (2) **Extra** fees and costs are those that are "in addition to those a party is normally required to pay in order to prosecute or defend [the] case, which result when a party employs or responds to a procedure not necessarily required in the particular type of proceeding." They include, for example:

- Costs of expert testing, examination or testimony
- Cassette copies for indigent parties not represented by a public defender
- Appeal bonds

If you are requesting any extra fees and costs, the clerk will promptly present your request to a judge for decision within five days. The judge may allow your request without a hearing, but will not deny your request without holding a hearing. In reviewing a request for extra fees or costs, the judge will decide whether the document, service, or object is reasonably necessary to assure you as effective a prosecution, defense, or appeal as you would have if you were financially able to pay.

Normal and **extra** fees and costs do not include attorneys' fees.

How Do I Apply?

You should complete the Affidavit of Indigency form that applies to you. If you claim eligibility under Category (C) above, you must also complete the Supplement to Affidavit of Indigency form. File your papers with the clerk of the court where your case has been filed (or where you are seeking to file it). Court clerks must accept your initial court papers when you present them, even if you have not then obtained a waiver of the filing fee. If the fee is later waived, the date of filing your court papers will be the day you first presented them to the clerk.

What Is the Federal Poverty Line?

If you want to qualify under Category (B) above (income, after taxes, which is less than 125% of the Federal Poverty Line), you should consult a chart of these income limits which should be posted in your local courthouse. If you cannot find this chart, go to the clerk's office and find out where it is or ask to be given or to read a copy. This Poverty Line is increased every year in February or March, and so the court should have an up-to-date schedule.

How Do I Estimate the Costs?

There are places on the form where you can give the cost (if you know it) or give your best estimate of the cost of the particular fee or service that you need. If you do not know what the cost will be, give your best description of what you need. The court should approve your application, if you are otherwise eligible, even though you have not filled in complete information about the costs.

What Are the Situations in Which I Can Get a Substitution of a Service?

Under the law, a court can order that a different (or substitute) method of performing a certain act or service be allowed, rather than a less convenient or more expensive one. For example, in some situations a court might order that notice of filing a court action be made by posting in certain locations rather than by publishing the notice in a newspaper. In other situations you may be able to take depositions using tape recorders rather than using a more expensive stenographer.

If you have a request for a substitute method, please ask for it in your application. The court may, itself, order a less expensive or easier substitution. However, the judge may order you to pay a partial fee or cost rather than to waive it if you are otherwise eligible for waiver or state payment.

If you are a prisoner bringing an action in Superior Court, you will receive a summons and be instructed to serve it with your complaint by certified mail. You can ask for permission to use regular mail if paying the cost of certified mail presents a hardship. If you are filing a case in another court, you can ask for permission to serve by certified or regular mail.

Can I Appeal A Denial?

Yes. If you disagree with any decision of the clerk or assistant clerk, you can request a review by the judge. If you disagree with a decision of a judge, you can appeal to the next court level. There are short deadlines for doing this, so you must act quickly. Consult the clerk's office for information about how to do this.

Are the Indigent Court Costs Papers That I File in Court Confidential?

Yes; these papers are not available to the general public or to any other party in the case, but are available only to authorized court personnel and to you and your attorney or your other authorized representative. If you want an authorized representative other than your attorney to see or get copies of these documents, you should prepare a written consent so that a designated individual will have authority to do that. Any other party to the case, or their authorized representative, does not have access to these records unless that party gets a court order giving permission. Also, when you file an application or an appeal under the indigent court costs law, you are not required to give copies of any of these documents to any other party in the case.

2004 Federal Poverty Guidelines

Every year, the federal government establishes poverty guidelines to determine who is financially eligible for particular programs. The chart below tells you what the yearly income cutoffs are for 2004 at 125% of poverty. These figures change every year around February and are available at: www.aspe.os.dhhs.gov/poverty/.

Household Size	125% of Poverty
1	\$11,638
2	\$15,613
3	\$19,588
4	\$23,563
5	\$27,538
6	\$31,513
7	\$35,488
8	\$39,463
+ additional	<i>add \$3,975</i>

Source: Federal Register, Vol. 69, No. 30 (Friday, February 13, 2004), pp. 7336-7338.