

SUMMARY: Fee Waiver Rules

July 2015

Effective July 1, 2015, revised rules govern the waiver of costs due to indigency. The purpose of the rules is to provide a uniform process and guidelines for granting fee waivers to indigent persons in civil cases. The following is a summary of the revised rules. Please refer to the rules themselves for the complete language necessary to implementation.

Please note:

- There is **NO FEE** for the filing of a waiver request. Rule 20-201(i)(2)(C).
- The **timing of docket entries** for pleadings subject to waiver requests or motions will be governed by Rule 20-201.

WAIVER OF PREPAID COSTS

- **Automatic Fee Waivers for Clients of Approved Civil Legal Services Providers, Legal Aid or the Office of the Public Defender (Rule 1-325(d)):** Clerks will grant the prepayment waiver, without the need for a court order, for parties represented by a lawyer retained through a program approved by the Maryland Legal Services Corporation (MLSC). A list of approved programs may be found at: <http://mdcourts.gov/courts/pdfs/feewaiverapprovedproviders.pdf>. Automatic fee waivers are also required for civil clients of Maryland Legal Aid and the Office of the Public Defender.
 - **Statement Required.** The attorney or program must submit a statement with certain information.
 - **Certification Required.** The attorney must certify there is good ground to support the claim. No certification is required by the Office of the Public Defender in civil cases where they are statutorily required to provide representation.
- **Discretionary Fee Waivers for Indigent Persons Who are Self-Represented or Who Are Represented by An Attorney Who is Not Associated with an Approved Provider (Rule 1-325(e)).** All other persons who cannot pay the prepaid costs by reason of poverty may request an order waiving the costs.
 - **Affidavit Required.** The person must include an affidavit regarding their income in substantially the form provided by the AOC.
 - **Certification Required.** If the person is represented, their attorney must certify there is good ground to support the claim.
 - **Court Must Consider MLSC Guidelines.** In evaluating the request the court must consider whether the individual has an income level that meets the MLSC Guidelines. The court must also consider other factors that reflect on the party's ability to pay.
 - **Order Required.** In ruling on the request, the court must issue an order stating the basis for granting or denying the request. If the request is denied, the party has 10 days to pay the fee or the pleading will be deemed withdrawn.

WAIVER OF FINAL COSTS

- **Court Awards and Allocates Costs.** Costs should be awarded and allocated as required or permitted by law. Once costs are awarded and allocated, the court may consider a request for a final waiver of costs. (**Rule 1-325(f)(1)**).
- **Discretionary Waiver of Final Costs (Rule 1-325(f)).** At the conclusion of the case, a party may seek a final waiver of open costs, including appearance fees. The party must file a request.
 - **Affidavit Required.** The person must include an affidavit regarding their income in substantially the form provided by the AOC.
 - **Supplemental Affidavit Permitted.** If the party was granted a discretionary waiver of the prepaid costs (1-325(e)) and the court has already reviewed their financial status, the party may file a supplemental affidavit noting their continued inability to pay.
 - **Mandatory Waiver. Domestic Relations & Guardianship Cases.** In these cases, if the court finds the party is unable to pay, the court must grant the waiver. (Rules 2-603 and 10-107).
 - **Discretionary Waiver – Other Civil Case Types.** In other civil cases types, the waiver is discretionary. The court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay for reasons of poverty.

WAIVER OF PREPAID APPELLATE COSTS

There are two types of prepaid appellate costs: 1) those for assembling the record, payable to the lower court; and 2) the appellate court filing fee payable to the court hearing the appeal. New **Rule 1-325.1** provides for a process that addresses the waiver of both types of prepaid appellate costs. The process tracks the automatic and discretionary process used for waiving trial court costs. There is a two-step request process, although both requests are filed in the lower court with the notice of appeal.

1. **Request for Waiver of Costs Associated with Assembling the Record.** This is filed in the lower court with the notice of the appeal. This request is decided by the lower court.
2. **Request for Waiver of Appellate Court Filing Fee.** This is filed in the lower court with the notice of appeal. This request is transmitted to and decided by the appellate court.
 - a. **Timing & Transmittal Requirements.** The lower court must act on the Request for Waiver of Costs Associated with Assembling the Record within **5 days**, and transmit the waiver request to the appellate court for a ruling on the waiver of the appellate court filing fee, and a copy of the request and order regarding the waiver of the lower court's prepaid costs. The appellate court must act on the waiver request within **5 days** of receipt.
 - b. **Effect of Denial.** If either court denies the request, in whole or in part, the appellant has **10 days** to pay the outstanding prepaid costs. If timely paid, the appeal shall be deemed to have been filed on the day the request for the waiver was filed in the lower court.

Both requests can be used by parties represented by an approved provider as well as those who are self-represented litigants or persons represented by an attorney who is not an approved provider. As with the trial court fee waiver process, there are different procedures for each, both of which are addressed by the form:

- **Automatic Waivers for Clients of Approved Civil Legal Services Providers , Legal Aid or the Office of the Public Defender (Rule 1-325.1(c)(1)(E)).** As above, clients of approved civil legal services providers, Maryland Legal Aid and the Office of the Public Defender (in civil cases) are entitled to an automatic waiver of both types of prepaid appellate costs.
 - ***Certification Required.*** The attorney must certify there is good ground to support the appeal, and the appellant remains eligible for their representation. (Rule 1-325.1(c)(1)(E)).

- **Discretionary Waivers for Indigent Persons Who are Self-Represented or Who Are Represented by An Attorney Who is Not Associated with an Approved Provider (Rule 1-325.1(c)(1)(F)).**
 - ***Affidavit Required.*** The person must include an affidavit regarding their income in substantially the form provided by the AOC.
 - ***Supplemental Income Permitted.*** If the appellant received a waiver of prepaid costs at trial, the court may rely on a supplemental affidavit that the information provided earlier remains accurate and there has been no material change in their financial circumstances.