

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-325, as follows:

Rule 1-325. WAIVER OF COSTS DUE TO INDIGENCE - GENERALLY

(a) Scope

This Rule applies only to original civil actions in a circuit court or the District Court.

Committee note: Original civil actions in a circuit court include actions governed by the Rules in Title 7, Chapter 200, 300, and 400.

(b) Definition

In this Rule, "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

Committee note: "Prepaid costs" may include a fee to file an initial complaint or a motion to reopen a case, a fee for entry of the appearance of an attorney, and any prepaid compensation, fee, or expense of a master, examiner, or family magistrate. See Rules 1-501, 2-541, 2-542, 2-603, and 9-208.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On written request, the clerk shall waive the prepayment of

prepaid costs, without the need for a court order, if:

(1) the party is an individual who is represented (A) by an attorney retained through a pro bono or legal services program on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website, provided that an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states that the attorney is associated with the program and the party meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act), or (B) by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender, and

(2) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) the pleading or paper sought to be filed; (B) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices; and (C) if the individual is represented by an attorney, the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay.

Cross reference: See Rule 1-311 (b) and Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and

(B) any other factor that may be relevant to the individual's ability to pay the prepaid cost.

(3) Order; Payment of Unwaived Prepaid Costs

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver. If the court denies, in whole or in part, a request for the waiver of its prepaid costs, it shall permit the party, within 10 days, to pay the unwaived prepaid cost. If, within that time, the party pays the full amount of the unwaived prepaid costs, the pleading or paper shall be deemed to have been filed on the date the request for waiver was filed. If the unwaived prepaid costs are not paid in full within the time allowed, the pleading or paper shall be deemed to have been withdrawn.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) Waiver

(A) Request

At the conclusion of an action, a party may seek a final waiver of open costs, including any unpaid appearance fee, by filing a request for the waiver, together with (i) an

affidavit substantially in the form prescribed by subsection (e) (1) (A) of this Rule, or (ii) if the party was granted a waiver of prepayment of prepaid costs by court order pursuant to section (e) of this Rule and remains unable to pay the costs, an affidavit that recites the existence of the prior waiver and the party's continued inability to pay by reason of poverty.

(B) Determination by Court

In an action under Title 9, Chapter 200 of these Rules or Title 10 of these Rules, the court shall grant a final waiver of open costs if the requirements of Rules 2-603 (e) or 10-107 (b), as applicable, are met. In all other civil matters, the court may grant a final waiver of open costs if the party against whom the costs are assessed is unable to pay them by reason of poverty.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
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ADD new Rule 1-325.1, as follows:

Rule 1-325.1. WAIVER OF PREPAID APPELLATE COSTS IN CIVIL ACTIONS

(a) Scope

This Rule applies (1) to an appeal from an order or judgment of the District Court or an orphans' court to a circuit court in a civil action, and (2) to an appeal as defined in subsection (b) (1) of this Rule seeking review in the Court of Special Appeals or the Court of Appeals of an order or judgment of a lower court in a civil action.

(b) Definitions

In this Rule, the following definitions apply:

(1) Appeal

"Appeal" means an appeal, an application for leave to appeal to the Court of Special Appeals, and a petition for certiorari or other extraordinary relief filed in the Court of Appeals.

(2) Clerk

"Clerk" includes a Register of Wills.

(3) Prepaid Costs

"Prepaid costs" means (A) the fee charged by the clerk of the lower court for assembling the record, (B) the cost of

preparation of a transcript in the District Court, if a transcript is necessary to the appeal, and (C) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

(c) Waiver

(1) Generally

Waiver of prepaid costs under this Rule shall be governed generally by section (d) or (e) of Rule 1-325, as applicable, except that:

(A) the request for waiver of both the lower and appellate court costs shall be filed in the lower court with the notice of appeal;

(B) a request to waive prepayment of the fee for filing a petition for certiorari or other extraordinary relief in the Court of Appeals shall be filed in, and determined by, that Court;

(C) waiver of the fee charged for assembling the record shall be determined in the lower court;

(D) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the lower court;

(E) both fees shall be waived if (i) the appellant received a waiver of prepaid costs under section (d) of Rule 1-325 and will be represented in the appeal by an eligible attorney under

that section, (ii) the attorney certifies that the appellant remains eligible for representation in accordance with Rule 1-325 (d), and (iii) except for an attorney employed or appointed by the Office of the Public Defender in a civil action in which that Office is required by statute to represent the party, the attorney further certifies that to the best of the attorney's knowledge, information, and belief there is good ground to support the appeal and it is not interposed for any improper purpose or delay; and

(F) if the appellant received a waiver of prepaid costs under section (e) of Rule 1-325, the lower court and appellate court may rely on a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under Rule 1-325 (e) remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

(2) Procedure

(A) If an appellant requests the waiver of the prepaid costs in both the lower and appellate courts, the lower court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost, together with a copy of the request and order regarding the waiver of the lower court prepaid cost.

(B) The appellate court shall act on the request for the waiver of its prepaid cost within five business days after

receipt of the request from the lower court.

(C) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal shall be deemed to have been filed on the day the request for waiver was filed in the lower court or, as to a petition for certiorari or other extraordinary relief, in the Court of Appeals. If the unwaived prepaid costs are not paid in full within the time allowed, the appeal shall be deemed to have been withdrawn.

Source: This Rule is new.