

## **Rule 54-II. Waiver of Costs, Fees, or Security**

(a) General. The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action upon the presentation of Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court must not deny such an Application solely because the applicant is at or above the federal poverty guidelines. Such an Application may be submitted at any point in the proceedings. Unless the court orders otherwise, the Application need not be served on the other parties and will be resolved ex parte. When an Application is granted in whole or in part, a notation will be made on the record in said action.

(b) Public benefits. If an applicant receives Temporary Assistance for Needy Families (TANF), General Assistance for Children (GAC), Program on Work, Employment and Responsibility (POWER), or Supplemental Security Income (SSI), the court must grant the Application without requiring additional information from the applicant.

(c) Health care benefits. Consistent with Form 106A, if an applicant receives Interim Disability Assistance (IDA), Medicaid, or the D.C. HealthCare Alliance, the court may grant the Application without requiring additional information from the applicant.

(d) Significant costs. In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) Merit of underlying action. The court may not refuse to waive costs, fees, or security based upon the perceived lack of merit of the underlying action.

(f) Dismiss actions; enjoin repeat filers of frivolous matters. Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) Requiring additional information. If there is good cause to believe the information contained in Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete Application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) Declaration. The Application must include the signed Declaration in Form 106A. Notarization is not required.

(i) Witness fees. Where a request to proceed without prepayment of costs, fees, or security is granted, witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.

(j) Ruling in writing or on the record. If the court denies the Application for a waiver of the prepayment of costs, fees, or security, the court must state its reason(s) for such ruling in writing or on the record in the presence of the applicant or his or her counsel.

(k) Motion for free transcripts. An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed.

## COMMENT TO 2010 AMENDMENT

D.C. Code § 15-712 governs *in forma pauperis* applications. There is no Federal Rule of Civil Procedure addressing such applications, but 28 U.S.C. § 1915 does. The District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for *in forma pauperis* based upon the merit of the underlying action. Compare D.C. Code § 15-712 with 28 U.S.C. § 1915(e)(2); see *In re Turkowski*, 741 A.2d 406, 407 (D.C. 1999) (per curiam) ("the court must grant the request for *in forma pauperis* status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions"); accord *Lewis v. Fulwood*, 569 A.2d 594, 595 (D.C. 1990) (per curiam).

The Rule requires applicants seeking *in forma pauperis* status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and caselaw.

Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. See, e.g., *P.F. v. N.C.*, 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding *in forma pauperis* is entitled to a free transcript "if the trial judge . . . certifies that the appeal is not frivolous" and that "[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner") (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.*, 472 A.2d 867 (D.C. 1984), as discussed in *P.F.*, 953 A.2d at 1119.

The Rule is stylistically consistent with Civil Rule 54-II, which is stylistically consistent with the Federal Rules of Civil Procedure.