

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
RULE PROMULGATION ORDER 10-01**

(Amend SCR Civil 54-II, DR 54, 54-II, General Family Rule R and new CA Form 106A)

**WHEREAS**, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rule of Civil Procedure 54-II, Rules Governing Domestic Relations Proceedings 54 and new Rule 54-II, General Rule of the Family Court R and new Civil Action Form 106A to replace existing Civil Action Form 106;

**WHEREAS**, these rules do not modify the Federal Rules of Criminal or Civil Procedure; it is

**ORDERED** that Superior Court Rule of Civil Procedure 54-II Rule Governing Domestic Relations 54, General Family Rule R are amended and new Rule Governing Domestic Relations 54-II and new Civil Action Form 106A are promulgated and it is further

**ORDERED** that the above enumerated amendments, new Rule Governing Domestic Relations 54-II and new Civil Action Form 106A shall take effect April 11, 2010 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

## SCR CIVIL 54-II

### Waiver of Costs, Fees, or Security

~~The Court may waive the prepayment of costs or the payment of costs accruing during any action upon the presentation of an affidavit in the form prescribed in CA Form 106 or other satisfactory evidence, and a finding that the party is unable to pay such costs. When costs are so waived the notation to be made on the records of said action shall be "Prepayment of costs waived", or "Costs waived". The officers of the Court shall issue and serve all process, and perform all duties in such cases. Witnesses shall be subpoenaed without prepayment of witness fees, and the same remedies shall be available as are provided for by law in other cases.~~

(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 shall 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) SERVICE OF PROCESS AND WITNESS FEES. Where a request to proceed without prepayment of costs, fees, or security is granted, the officers of the court will issue and serve all process and perform all duties in such cases. 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

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.

## SCR DR 54

### JUDGMENTS; COSTS

(a) *Definition; form.* "Judgment" as used in these Rules includes a decree and any order from which an appeal lies.

(b) *Judgment upon multiple claims or involving multiple parties.* When more than one claim for relief is presented in an action, whether as a claim or counterclaim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) *Extent of relief.* A judgment by default shall not be different in kind from or exceed in amount that prayed for in the pleading seeking relief. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) *Costs and attorneys' fees.*

(1) Claims for costs and attorneys' fees shall be made in the complaint or answer and supported in detail in a motion in accordance with subparagraph (d)(2) of this Rule.

(2) Unless otherwise provided by statute or directed by the Court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the Court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(3) The Court shall afford an opportunity for opposition to the motion. The Court shall find the facts and state its conclusions of law as provided in SCR-Dom Rel 52(a), and a judgment shall be set forth as provided in SCR-Dom Rel 58.

(4) Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be awarded at the discretion of the Court.

(5) The Court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the Court may refer issues relating to the value of services to a master under SCR-Dom Rel 53 without regard to the provisions of paragraph (b) thereof and may refer a motion for attorneys' fees to a hearing commissioner as if it were a dispositive pretrial matter.

(6) The provisions of subparagraphs (d)(1) through (5) do not apply to claims for fees and expenses as sanctions for violations of these rules.

(e) *Costs of previously dismissed action.* If a claimant who has once dismissed an action in any court commences an action based upon or including the same claim against the same adverse party, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the claimant has complied with the order.

(f) ~~*Waiver of costs.* The Court may waive the prepayment of costs before or after commencement of an action, or the payment of costs accruing during any action upon the presentation of an affidavit in the form prescribed in CA Form 106 or other satisfactory evidence, and a finding that~~

~~the party is unable to pay such costs. When costs are so waived the notation to be made on the records of said action shall be "Prepayment of costs waived", or "Costs waived". The officers of the Court shall issue all process in such cases. Witnesses shall be subpoenaed without prepayment of witness fees, and the same remedies shall be available as are provided for by law in other cases Deleted.~~

## SCR DR 54-II

### [Deleted]. 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.

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(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.

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proceedings necessary to resolution of the appeal be transcribed.

#### COMMENT

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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.

## GENERAL FAMILY RULE R

### JUDGE IN CHAMBERS; JUDGE ON EMERGENCY ASSIGNMENT

(a) *Judge in Chambers.*

(1) The following matters may at any time be presented for disposition to the Judge in Chambers: Approval of accounts, warrants and return of warrants, petitions to take depositions pursuant to SCR-Dom Rel 27(a), and any other matter appropriate for such disposition.

(2) The following matters, if presented before the case is assigned to a judicial officer, must be presented to the Judge in Chambers or any other judicial officer designated by the Chief Judge; thereafter, such matters must be presented to the judicial officer assigned to the case: Appointment of special process servers, motions with respect to publication of notice requirements, motions for temporary restraining orders, petitions for writs ne exeat, petitions for writs of habeas corpus, orders involving execution on attachments, writs of replevin, motions for orders to show cause, and Applications to ~~p~~Proceed ~~in forma pauperis~~ Without Prepayment of Costs, Fees, or Security (Form 106A).

(3) If a matter cannot be heard in time to grant effective relief based on the facts alleged, upon request of the movant, the Clerk shall certify the case to the Presiding Judge for reassignment for hearing.

(b) *Judge on emergency assignment.* Any matter requiring immediate judicial attention at a time outside the regular business hours of the Court may be presented to the judge on emergency assignment.



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
FAMILY COURT and CIVIL DIVISION

Plaintiff/Petitioner

v.

Case no: \_\_\_\_\_

Defendant/Respondent

**APPLICATION TO PROCEED WITHOUT  
PREPAYMENT OF COSTS, FEES, OR SECURITY (*In Forma Pauperis*)**  
Form 106A

I, \_\_\_\_\_ am the (check one)

Plaintiff/Petitioner  Defendant/Respondent

I need an interpreter for this case. I speak the following language:  
\_\_\_\_\_ [Insert Language].

I respectfully ask permission to proceed in this case without pre-paying costs or fees and without giving security for them because I am not able to do so without substantial hardship to myself or to my family. In support of this request, I state the following:

Check and answer only those that apply.

**INCOME**

1. I receive the following public benefits, and the law presumes that I am eligible to proceed without prepayment of costs, fees, or security (see D.C. Code § 15-712):

- Temporary Assistance for Needy Families (TANF)
- General Assistance for Children (GAC)
- Program on Work, Employment and Responsibility (POWER)
- Supplemental Security Income (SSI)

2. Even though I do not receive the above public benefits, I receive the following similar benefits and, therefore, request that my Application be approved:

- Interim Disability Assistance (IDA) because my SSI application has not been approved/certified
- Medicaid
- DC Healthcare Alliance or the following similar health benefits (describe)\_\_\_\_\_.

If you checked any of the above boxes, you do not need to answer any more questions and may skip to the section called "Declaration." Otherwise, you must answer the rest of the questions on this form. If additional information is required, you will be notified.

3. My total income over the past 12 months from all sources (including, but not limited to, my job, other wages or business income, rental income, pensions, annuities or life insurance payments, worker's compensation, unemployment compensation or insurance, annual interest or dividends, gifts, alimony or spousal support, inheritance or trust income) is \$\_\_\_\_\_.

4. I am presently unemployed. The last date I worked was on \_\_\_\_\_, \_\_\_\_\_. Month Year

### **DEPENDENTS**

5. How many people live in your household and depend on you for support: \_\_\_\_\_. Of these people, how many are minor children or elderly? \_\_\_\_\_.

### **ASSETS**

6. I state the following about my property:

I have \$\_\_\_\_\_ in cash, including money in savings or checking accounts. I own the vehicles, personal home, other real estate, stock, bonds, or other valuable property, besides household furnishings and clothing, listed below:

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List the Property

**EXPENSES**

7. This is my best estimate of the monthly expenses for myself and the people in my household who depend on me for support:

Housing (rent, mortgage, taxes, & insurance): \$\_\_\_\_\_ Public Transportation  
and Gasoline: \$\_\_\_\_\_ Automobile Loan, Insurance, Maintenance:  
\$\_\_\_\_\_ Health (medical, dental, vision, prescriptions, insurance):  
\$\_\_\_\_\_ Food and other Household Necessities: \$\_\_\_\_\_ Utilities  
(including gas, electric, water, phone, internet): \$\_\_\_\_\_ Clothing:  
\$\_\_\_\_\_ Child Support: \$\_\_\_\_\_ Childcare (including diapers,  
daycare): \$\_\_\_\_\_ Other (explain in detail):  
\$\_\_\_\_\_

**Total Estimated Monthly Expenses:** \$\_\_\_\_\_

**OTHER SPECIAL CIRCUMSTANCES**

8. (Optional) Explain any other special circumstances that you want to have considered in support of your request, including any large monthly expenses, debts, wage or bank account garnishments, and/or judgments.

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## **DECLARATION**

**REQUIRED:** I solemnly swear or affirm under criminal penalties for the making of a false statement, which includes 180 days in jail or a \$1,000 fine or both, that I have read this Application and that the factual statements made in it are true to the best of my personal knowledge, information and belief.

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Signature

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Address

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Phone Number

---

Date

### **POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS, FEES, OR SECURITY**

- 1 D.C. Code § 15-712.
- 2 D.C. Code § 22-2405.
- 3 Civil Rule 54-II, Domestic Relations Proceedings Rule 54-II, and Family Rule R.
- 4 *Adkins v. E.I. Du Pont de Nemours & Co., Inc.*, 335 U.S. 331 (1948).
- 5 *Harris v. Harris*, 137 U.S. App. D.C. 318, 322, 424 F.2d 806 (1970), *cert. denied*, 400 U.S. 826 (1970) (“*in forma pauperis* relief not limited to those who are public charges or absolutely destitute”).
- 6 *Green v. Green*, 562 A.2d 1214 (D.C. 1989) (statute “effectuates the fundamental principle that every litigant should be provided equal access to the courts without regard to financial ability”).
- 7 *Herbin v. Hoeffel*, 727 A.2d 883, 887 (D.C. 1999) (court officers serve process in *in forma pauperis* cases).
- 8 *Cabillo v. Cabillo*, 317 A.2d 866, 866 (D.C. 1974) (per curiam) (reversing denial of *in forma pauperis* status and mandating granting of petition where litigant’s income “only slightly above the welfare standard”).

<sup>1</sup>When you come to court, you may be asked questions about this Application. If your responses are not truthful, you could face additional criminal penalties.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
FAMILY COURT and CIVIL DIVISION

Plaintiff/Petitioner

v.

Case No. \_\_\_\_\_

Defendant/Respondent

**ORDER**

Having considered  Plaintiff/Petitioner's  Defendant/Respondent's Application to Proceed without Prepayment of Costs, Fees, or Security, it is hereby ordered that the Application is:

- GRANTED** in this Family Court case and, pursuant to Domestic Relations Rule 54-II, witnesses will be subpoenaed without prepayment of witness fees;
- GRANTED** in this Civil Division case and, pursuant to Civil Rule 54-II, the officers of the Court will issue and serve all process; witnesses will be subpoenaed without prepayment of witness fees;
- DENIED** .
  - o **For the following reasons:** \_\_\_\_\_
  - o For the reasons stated on the record in open court and in the presence of the applicant or his or her counsel;

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

By the Court:

Date: March 15, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
Lee F. Satterfield  
Chief Judge

Copies to:

All Judges

All Magistrate Judges

Library

David Luria, Attorney Advisor