

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

(a) **IN GENERAL.** The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action on the presentation of Civil Action 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 an application solely because the applicant is at or above the federal poverty guidelines. 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 in the record of that action.

(b) **PUBLIC BENEFITS.** If an applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment and Responsibility, or Supplemental Security Income, the court must grant the application without requiring additional information from the applicant.

(c) **HEALTH CARE BENEFITS.** Consistent with Civil Action Form 106A, if an applicant receives Interim Disability Assistance, 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 the prepayment of costs, fees, or security based on the perceived lack of merit of the underlying action.

(f) **DISMISSING ACTIONS; ENJOINING 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 Civil Action 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 Civil Action Form 106A. Notarization is not required.

(i) **SERVICE OF COMPLAINT; SERVICE ON MINOR OR INCOMPETENT PERSON; SERVICE OF WITNESS SUBPOENA; WITNESS FEES.** Where an application to proceed without prepayment of costs, fees, or security is granted, the following provisions apply:

(1) *Service of Complaint.* The clerk will attempt to serve a defendant—other than a minor or incompetent person—with the materials listed in Rule 4(c)(1) by:

- (A) registered or certified mail, return receipt requested, under Rule 4(c)(4);
- (B) first-class mail with notice and acknowledgment under Rule 4(c)(5); or
- (C) both methods listed in Rule 54-II(i)(1)(A) and (B).

(2) *Service on Minor or Incompetent Person.* Where the defendant is a minor or incompetent person within the meaning of D.C. Code §§ 13-332 and -333 (2012 Repl.), the court may, on motion, appoint a person to serve the materials listed in Rule 4(c)(1) by the methods described in Rule 4(g).

(3) *Service of Witness Subpoena; Witness Fees.* On motion, the court may in its discretion appoint a person to serve witness subpoenas. 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 to proceed without prepayment of costs, fees, or security, the court must state its reason(s) for denial 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 2017 AMENDMENTS

Section (i) has been amended to clarify and limit the types of service that the court is required to undertake on behalf of *in forma pauperis* litigants. Generally, the court will attempt service of the complaint and related materials by registered or certified mail, return receipt requested, or by first-class mail with notice and acknowledgment. By motion, the court may appoint a process server to serve witness subpoenas or to serve a complaint and related materials on an incompetent or minor defendant as required by statute.

By limiting the types of service and reducing corresponding costs, the court also helps to limit the *in forma pauperis* litigant's potential liability where "[c]osts may be assessed against a party proceeding *in forma pauperis* at the conclusion of an unsuccessful suit." *Robinson v. Howard University*, 455 A.2d 1363, 1367 (D.C. 1983). Additionally, these amendments address a concern first raised in *Atherton v. Brooks*, 728 A.2d 1195 (D.C. 1999), in which the District of Columbia Court of Appeals opined that the language in Rule 54-II related to the waiver of prepayment of witness fees could be interpreted as imposing a corresponding obligation on the trial court to serve witness subpoenas—"an administrative burden" that might not have been considered when the rule was adopted.

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 case law. 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.