

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 23-03

(Amending Super. Ct. Civ. R. 54-II)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Superior Court Rule of Civil Procedure 54-II; and

WHEREAS, the amendments do not modify a federal criminal or civil rule; it is

ORDERED, that Superior Court Rule of Civil Procedure 54-II is hereby amended as set forth below; and it is further

ORDERED, that the amendments shall take effect immediately and shall govern all proceedings hereafter commenced and, insofar as just and practicable, all pending proceedings.

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~~ relating to any action on the ~~presentation-filing~~ of ~~Civil Action Form 106A (anthe court's~~ Application to Proceed Without Prepayment of Waive Court Costs, and Fees form provided by the court, ~~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. The application must be signed and sworn or affirmed in accordance with the declaration language on the form. Notarization is not required. ~~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~~ approved (in whole or in part) ~~or denied~~, a notation will be made in the ~~record of that action~~ docket.

(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~~ WAIVERS BY STATUTE. The court or the clerk must ~~grant~~ approve the application, without requiring additional information from the applicant ~~except as provided in Rule 54-II(g), if:~~

(1) *Financial Assistance.* The applicant, or a dependent if a claim or defense is asserted on the dependent's behalf, receives financial assistance under a program listed in D.C. Code §§ 15-712(a)(1)(A) or -712(a)(1)(B);

(2) *Monthly Income.* The applicant's monthly income does not exceed 200% of the federal poverty guidelines issued by the United States Department of Health and Human Services; or

(3) *Applicants Receiving Free Legal Representation By Nonprofit Organizations.* The applicant is represented free of charge by a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients, or a legal clinic operated by a law school located in the District of Columbia that provides legal services to low-income clients. For the purposes of this subsection, representation by a legal services or other nonprofit organization includes representation by pro bono counsel to whom the litigant has been referred by the organization. Counsel must include a certification that they are representing the litigant pro bono on referral from a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients.

(c) **SUBSTANTIAL HARDSHIP WAIVER.** ~~If the applicant does not qualify for a waiver under Rule 54-II(b), the court may approve an application in whole or in part on a finding that the party is unable to pay costs, fees, or security without substantial hardship to the applicant or to the applicant's dependent.~~ **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. ~~In considering an application, the court must not consider the merit of the 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, t~~

~~(1) *In General.* The court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action if:-~~

~~(A) an application is submitted pursuant to Rule 54-II(c);~~

~~(B) there is good cause to believe the information submitted by the litigant in support of the application is inaccurate or misleading; or~~

~~(C) the applicant has undergone a change in circumstances bearing on the merits of the application.~~

~~(2) *Incomplete Application.* An incomplete application will be returned to the applicant with notice to the applicant as to which information is missing. The applicant may resubmit a complete application without prejudice.~~

(h) DECLARATION. ~~The application must include the signed declaration in Civil Action Form 106A. Notarization is not required.~~ TIMING. ~~An application may be submitted at any point in the proceedings.~~

~~(1) Within 5 calendar days after receiving a completed application, the court must decide whether to approve the waiver, except that an application presented in open court must be decided immediately.~~

~~(2) If, within 5 calendar days after receiving a completed application, the court has not ruled on the application, the application will be deemed approved.~~

~~(3) The deadlines in Rule 54-II(h) do not apply where the court requires additional information under Rule 54-II(g).~~

(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~~ approved, 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). The clerk must attempt service of the complaint in a manner prescribed by the court's rules for all persons who have been granted full waivers of payment of fees and costs or security and, where partial waivers of the payment of fees and costs or security have been granted, as directed by the court.~~

(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.

(4) *Date and Manner of Service.* The clerk must note the date and manner of service on the docket.

(j) RULING IN WRITING OR ON THE RECORD.

(1) *Denial.* If the court denies the application ~~to proceed without prepayment of costs, fees, or security in whole or in part~~, the court must state its reason(s) for denial in writing or ~~in court with the applicant present on the record in the presence of the applicant or his or her counsel.~~

(2) *Hearing.* An applicant who is denied a waiver in whole or in part may request an ex parte hearing within 14 days to present additional evidence that the applicant is unable to proceed without substantial hardship to the applicant or the applicant's dependent. A hearing under this rule must be held no later than 14 days after the court receives the hearing request.

(k) MOTION FOR FREE TRANSCRIPTS OR OTHER DOCUMENTS. An applicant who has received a waiver of the ~~prepayment~~ of costs, fees, or security may file a motion requesting that free transcripts or other documents be prepared ~~for appeal~~ and explaining the basis for the motion. The court ~~may not refuse~~ must grant the motion for to provide free transcripts or other documents unless the appeal request is frivolous. In making this determination, the court must resolve doubt about the ~~merits~~ frivolousness of the appeal request in favor of the applicant. The court may order that only those portions of the ~~trial proceedings~~ transcripts or other documents necessary to resolution of the suit, action, proceeding, or appeal ~~be transcribed~~ be provided.

(l) CONFIDENTIALITY.

(1) *In general.* Notwithstanding Rule 5-III and Rule 5.2, the court must keep an application and any financial information submitted by the applicant pursuant to this rule confidential, except to the court, the litigant, persons authorized by the litigant, or by court order.

(2) *On Motion.*

(A) Any person seeking access to an application or financial information provided to the court by an applicant may file a motion, with notice given to the litigant who filed the application, supported by a declaration showing good cause for why the confidential information should be released to the movant.

(B) Any person granted access to an application or financial information under Rule 54-II(l)(2)(A) must not reveal any information contained in the application or financial information, except as otherwise authorized by law or court order.

(3) *Decision not confidential.* The court's decision on an application for a waiver is not confidential.

(m) FILING FEE.

(1) *In general.* No fee will be assessed for filing an Application to Waive Court Costs and Fees.

(2) *Additional information.* No fee will be assessed for filing any additional information relating to an application, including information requested under Rule 54-II(c), (g) or (j)(2), unless the court has previously considered and denied an application by the applicant in the same suit, action, or proceeding.

(3) *Simultaneous filings.* No fee will be assessed for filing any motions or other documents simultaneously with an application, unless and until the court denies the application.

(4) *Dismissal.* If an application is denied in whole, the clerk will dismiss a case without prejudice or reject a filing, or both, unless the applicable filing fee is paid within 14 days of the denial.

COMMENT TO 2023 AMENDMENTS

This rule has been substantially amended and reorganized to implement the Expanding Fee Waivers for Low-Income Litigants Amendment Act of 2022, D.C. Law 24-246, 69 D.C. Reg. 14603 (February 23, 2023), D.C. Code § 15-712. Among other things, the amendments significantly expand the circumstances under which litigants may qualify for an automatic fee waiver under D.C. Code § 15-712(a)(1). The qualifying health care benefits formerly listed in section (c) have been included in the list of qualifying financial assistance programs cited in subsection (b)(1). Amended section (h) includes new statutory deadlines for deciding fee waiver applications. Subsection (i)(1) has been amended, and new subsection (i)(4) has been added, consistent with the new service provisions in D.C. Code § 15-712(f). New subsection (j)(2) implements a new statutory option for applicants to request a hearing if denied a fee waiver. Section (k) has been amended to permit those approved for a fee waiver to request other documents, in addition to free transcripts, as necessary to resolve Superior Court proceedings, as well as appeals. Section (l) is a new provision implementing new confidentiality requirements in D.C. Code § 15-712(d). Section (m) is also a new provision implementing filing fee limitations in D.C. Code § 15-712(e). Finally, minor amendments have been made to other sections to align with the new language of D.C. Code § 15-712.

To the extent D.C. Code § 15-712 includes procedural rules, the Court has adopted them pursuant to its exclusive rulemaking authority under D.C. Code § 11-946. See *Woodroof v. Cunningham*, 147 A.3d 777 (D.C. 2016).

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

(a) **IN GENERAL.** The court may waive the payment of costs, fees, or security relating to any action on the filing of the Application to Waive Court Costs and Fees form provided by the court. The application must be signed and sworn or affirmed in accordance with the declaration language on the form. Notarization is not required. 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 approved (in whole or in part) or denied, a notation will be made in the docket.

(b) **WAIVERS BY STATUTE.** The court or the clerk must approve the application, without requiring additional information from the applicant except as provided in Rule 54-II(g), if:

(1) *Financial Assistance.* The applicant, or a dependent if a claim or defense is asserted on the dependent's behalf, receives financial assistance under a program listed in D.C. Code §§ 15-712(a)(1)(A) or -712(a)(1)(B);

(2) *Monthly Income.* The applicant's monthly income does not exceed 200% of the federal poverty guidelines issued by the United States Department of Health and Human Services; or

(3) *Applicants Receiving Free Legal Representation By Nonprofit Organizations.* The applicant is represented free of charge by a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients, or a legal clinic operated by a law school located in the District of Columbia that provides legal services to low-income clients. For the purposes of this subsection, representation by a legal services or other nonprofit organization includes representation by pro bono counsel to whom the litigant has been referred by the organization. Counsel must include a certification that they are representing the litigant pro bono on referral from a legal services or other nonprofit organization whose primary purpose is to provide legal services to low-income clients.

(c) **SUBSTANTIAL HARDSHIP WAIVER.** If the applicant does not qualify for a waiver under Rule 54-II(b), the court may approve an application in whole or in part on a finding that the party is unable to pay costs, fees, or security without substantial hardship to the applicant or to the applicant's dependent.

(d) **SIGNIFICANT COSTS.** In determining whether to waive the payment 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.** In considering an application, the court must not consider the merit of the underlying action.

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(2) *Incomplete Application.* An incomplete application will be returned to the applicant with notice to the applicant as to which information is missing. The applicant may resubmit a complete application without prejudice.

(h) TIMING. An application may be submitted at any point in the proceedings.

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(1) *Service of Complaint.* The clerk must attempt service of the complaint in a manner prescribed by the court's rules for all persons who have been granted full waivers of payment of fees and costs or security and, where partial waivers of the payment of fees and costs or security have been granted, as directed by the court.

(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).

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(k) MOTION FOR FREE TRANSCRIPTS OR OTHER DOCUMENTS. An applicant who has received a waiver of the payment of costs, fees, or security may file a motion requesting that free transcripts or other documents be prepared and explaining the basis for the motion. The court must grant the motion for free transcripts or other documents unless the request is frivolous. In making this determination, the court must resolve doubt about the frivolousness of the request in favor of the applicant. The court

may order that only those portions of the transcripts or other documents necessary to resolution of the suit, action, proceeding, or appeal be provided.

(j) CONFIDENTIALITY.

(1) *In general.* Notwithstanding Rule 5-III and Rule 5.2, the court must keep an application and any financial information submitted by the applicant pursuant to this rule confidential, except to the court, the litigant, persons authorized by the litigant, or by court order.

(2) *On Motion.*

(A) Any person seeking access to an application or financial information provided to the court by an applicant may file a motion, with notice given to the litigant who filed the application, supported by a declaration showing good cause for why the confidential information should be released to the movant.

(B) Any person granted access to an application or financial information under Rule 54-II(j)(2)(A) must not reveal any information contained in the application or financial information, except as otherwise authorized by law or court order.

(3) *Decision not confidential.* The court's decision on an application for a waiver is not confidential.

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COMMENT TO 2023 AMENDMENTS

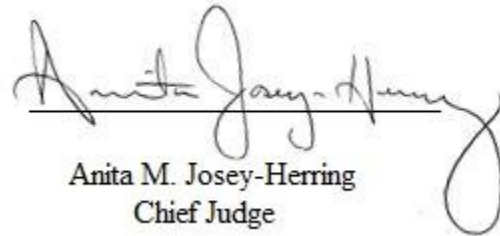
This rule has been substantially amended and reorganized to implement the Expanding Fee Waivers for Low-Income Litigants Amendment Act of 2022, D.C. Law 24-246, 69 D.C. Reg. 14603 (February 23, 2023), D.C. Code § 15-712. Among other things, the amendments significantly expand the circumstances under which litigants may qualify for an automatic fee waiver under D.C. Code § 15-712(a)(1). The qualifying health care benefits formerly listed in section (c) have been included in the list of qualifying financial assistance programs cited in subsection (b)(1). Amended section (h) includes new statutory deadlines for deciding fee waiver applications. Subsection (i)(1) has been amended, and new subsection (i)(4) has been added, consistent with the new service provisions in D.C. Code § 15-712(f). New subsection (j)(2) implements a new statutory option for applicants to request a hearing if denied a fee waiver. Section (k) has been amended to permit those approved for a fee waiver to request other documents, in addition to free transcripts, as necessary to resolve Superior Court

proceedings, as well as appeals. Section (l) is a new provision implementing new confidentiality requirements in D.C. Code § 15-712(d). Section (m) is also a new provision implementing filing fee limitations in D.C. Code § 15-712(e). Finally, minor amendments have been made to other sections to align with the new language of D.C. Code § 15-712.

To the extent D.C. Code § 15-712 includes procedural rules, the Court has adopted them pursuant to its exclusive rulemaking authority under D.C. Code § 11-946. See *Woodroof v. Cunningham*, 147 A.3d 777 (D.C. 2016).

* * *

SO ORDERED



Anita M. Josey-Herring
Chief Judge

Date: June 20, 2023

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Lynn Magee, Director, Civil Division
Library
Daily Washington Law Reporter
Pedro E. Briones, Associate General Counsel