

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

**Notice of Proposed Amendments to Rule 54-II of the
Superior Court Rules of Civil Procedure**

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Rule 54-II of the Superior Court Rules of Civil Procedure. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved and adopted unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by 5:30 p.m. on May 3, 2023. Comments may be emailed to Pedro.Briones@dccsystem.gov or may be mailed to:

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All comments submitted in response to this notice will be available to the public. New language is underlined, and deleted language is stricken through.

[Civil] 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 (an Application to Proceed Without Prepayment of~~ Waive Court Costs, and 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. The application must include the signed declaration. 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.

(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 ~~pre~~payment 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 ~~pre~~payment 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).

(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 will 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 ~~pre~~payment 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.

(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.

(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. For example, the substantial hardship finding formerly in section (a) has been moved to section (c), and the declaration requirement formerly in section (h) has been moved to section (a). Section (b) has been amended to 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). Section (g) remains substantively the same, but has been reorganized for clarity and includes new subsection (g)(2) regarding incomplete fee waiver applications. Amended section (h) includes new statutory deadlines for deciding fee waiver applications. New subsection (i)(4) requires the clerk to note the date and manner of service provided under section (i). 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).

COMMENT TO 2019 AMENDMENTS

Section (b) was amended to permit the clerk to grant applications when the applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment, and Responsibility, or Supplemental Security Income.

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.