

SUPREME JUDICIAL COURT  
BOSTON, MASSACHUSETTS 02108

MARGARET H. MARSHALL  
CHIEF JUSTICE

**TO:** Chief Justice Armstrong  
Chief Justice Dortch-Okara  
Chief Justice DeVecchio  
Chief Justice Dunphy  
Chief Justice Grace  
Chief Justice Kyriakakis  
Chief Justice Scheier  
Chief Justice Zoll  
Acting Chief Justice Johnson

**FROM:** Chief Justice Marshall 

**DATE:** March 25 2003

**RE:** Affidavit of Indigency and Related Forms

---

Pursuant to G. L. c. 261, § 27B, I hereby prescribe the enclosed forms for requesting waiver, substitution or payment by the Commonwealth of fees and costs. Effective on Monday, May 5, 2003, these forms supersede the affidavit of indigency forms currently in use.

Enclosed are the following:

- 1) Affidavit of Indigency
- 2) Supplement to Affidavit of Indigency
- 3) Court's Determination Regarding Fees and Costs
- 4) Inmate's Affidavit of Indigency
- 5) Request for Payment to be Withdrawn from Inmate's Account
- 6) Order to Commissioner of Correction or County Sheriff to Provide Inmate Account Information
- 7) Instructions for Users
- 8) Instruction to Courts

Note that the inmate forms, pursuant to G. L. c. 261, § 29, and instructions are new. The confidentiality provisions have been revised to provide that the financial information in the

affidavit of indigency shall not, except by special order of the court, be disclosed to anyone other than authorized court personnel, the applicant, the applicant's counsel or anyone authorized in writing by the applicant.

Under the decision in Underwood v. Appeals Court, 429 Mass. 1017 (1998), the court may order payment of partial fees in appropriate cases. However, consistent with the procedure in G. L. c. 261, §§27C(2) and (3), a determination to order partial payment should be made only by a judge. See "Instructions to Courts."

If an applicant checks (B) on the affidavit of indigency, he or she need only provide the information requested in (B) without any need to fill out the supplement to the affidavit of indigency. This procedure is the same as on the current affidavit.

Note that G. L. c. 261, § 27A refers to public assistance under aid to families with dependent children, the emergency aid for elder and disabled residents or veterans' benefits programs, or assistance under Title XVI of the Social Security Act or the medicaid program, 42 USC 1396, et seq. The terminology on the form has been changed to reflect current programs. G. L. c. 261, § 27A refers to the current poverty threshold annually established by the Community Services Administration pursuant to § 625 of the Economic Opportunity Act. Since 1981, the annual update of the poverty income guidelines, formerly issued by the Community Services Administration, has been issued by the Department of Health and Human Services. See Annual Update of the Poverty Income Guidelines, Vol. 68, No. 26 Fed. Reg. 6456 (February 7, 2003).

Please distribute these forms to all clerks, registers or recorders in your court so that they are ready to begin using them on May 5, 2003.

## INSTRUCTIONS TO COURTS ON THE ADMINISTRATION OF THE INDIGENT COURT COSTS LAW

Accompanying these Instructions are revised forms to be effective May 5, 2003 under the state's Indigent Court Costs Law, c.261, §§27A - G and 29. Please note that, for the first time, this court has included instructions to applicants as part of the Affidavit of Indigency forms. Previously, each Trial Court Department was authorized to draft its own instructions, if any. It is important to give the same information to users so that the forms and procedures will be more easily understood. Trial Court Departments can supplement or modify these Instructions, as appropriate to their particular Departments, so long as the changes are not inconsistent with these Instructions. If a court department does so, it should submit its changes to the Chief Justice of the Supreme Judicial Court for quick review before they go into effect.

These are some comments that we make on the Indigent Court Costs Statute and forms, in order to provide guidance to you in administering this law.

**1) Partial Fees May Be Permitted** - In the decision of Underwood v. Appeals Court, 427 Mass. 1012 (1998), this court decided that the statute authorizes the assessment of a partial fee as a substitute for complete waiver of the fee or state payment of the cost. The judge should exercise reasonable discretion, considering the totality of the applicant's economic circumstances, before ordering payment of a partial fee.

**2) Instructions on Use of Inmate Forms** - Included in the packet is a separate set of forms designed to meet requirements under recent amendments to the law pertaining to inmate filings. These forms are for use only when the applicant: (1) is currently confined in a correctional institution; (2) has brought suit against a state or county agency, official or employee (except for a petition for relief from restraint under G.L. c. 248, §1); and (3) seeks waiver of "normal" (as opposed to "extra") fees and costs. See G.L. c. 261, § 29. If any of these three criteria are not met, the applicant and court personnel should use the general forms.

The special inmate forms include an affidavit of indigency form that requires the prisoner to supply the specific information required by § 29(b). The form incorporates a preamble that notifies inmates of the particular consequences of intentionally filing an affidavit that is false or is designed to abuse the judicial process, as set forth in § 29(f). Once the action is filed, the court must, under § 29(a), order the custodial official to produce a printout of the plaintiff/inmate's institutional canteen and savings accounts within 30 days so that the inmate's resources can be assessed. The packet includes a form order to the Commissioner of Correction or county sheriff for this purpose. The court may tentatively approve an inmate's application to permit service of process while the order to the correctional administrator and further review is pending. § 29(e). If, upon review of the inmate's application and account information, the court determines that the inmate is indigent, it may waive fees entirely; require a one-time partial payment toward the fees

and costs; or order an initial payment and subsequent installment payments. § 29(d). The form notice of waiver sets forth these options and notifies the prisoner of his/her obligation under § 29(d)(3) to forward the court's order to the appropriate custodial official. The form also permits the inmate to authorize the custodian to debit and send to the court the payments that are ordered.

**3) Acceptance of Court Papers Accompanying Filing Fee Waiver Requests -**

Sometimes applicants for waiver of filing fees present papers on a day which is within a statute of limitation or other time deadline (such as an appeal from a state agency adjudicatory hearing decision). As the statute states (c.261, §27C(1)), all papers offered for filing must be dated and accepted when they are first presented, and must be processed without delay. This means that no papers may be rejected because the filer has not yet obtained waiver of the filing fee. Rather, if the filing fee is later waived, the date of filing is the date of the original presentation of the papers.

**4) Duties of Clerk -** The statute requires that applications for waiver or state payment of normal fees or costs under Categories A (recipients of certain means-tested public benefit programs) and B (income is below 125% of the federal poverty line) must be approved by the Clerk (or the Assistant Clerk) without delay so long as they are regular on their face and raise no significant question about whether the applicant is indigent. G. L. c. 261, 27C(2). Except in prisoner cases, such papers should not be referred to a judge for decision, nor should further information be requested if the papers are properly completed. Also, the Clerk should not require an applicant to complete the Supplement to the Affidavit of Indigency form unless he or she is applying under Category C.

Applications under Category C, which requires the applicant to complete a Supplement to Affidavit of Indigency, can frequently be decided at the Clerk's level, based upon the information submitted. But if there are serious questions about whether the applicant meets the Category C standard, the application should be referred to a judge for decision.

**5) Confidentiality of Papers -** All papers relating to requests under the Indigent Court Costs Law are confidential and not available to the public. The only exceptions are that they are available to authorized court personnel and to the applicant and the applicant's attorney. They are not available to any other party or their authorized representative without a specific court order. If an authorized representative (other than an attorney) for an applicant seeks to review or to obtain copies of any of these documents, that person should present a written consent by the applicant before access is permitted.

**6) Appeals -** G. L. c. 261, § 27C(3) provides that if the affidavit is not regular on its face or does not indicate the applicant is indigent, the clerk or register shall bring it to the attention of a judge. Any denial or other decision by a Judge can be appealed to an appellate court under the procedures provided for in the statutes or rules. G. L. c. 261, § 27D.

**7) Posting of Federal Poverty Line Information -** A chart showing 125% of the current federal standards of poverty for different sized families must be posted in each local court in a

place where litigants are likely to see it. These standards are updated by the federal government each year in February or March, and so courts should be sure that they have a current schedule posted. Each year, shortly after the federal change, the Supreme Judicial Court staff mails out a copy of the new schedule. If the schedule is not posted in the courthouse, applicants who need to review it are instructed to ask for a copy at the Clerk's office.

8) **Estimated Costs** - Applicants are asked to give their best estimates of the costs of the services whose waiver or state payment they are requesting. If they do not know the cost, they are asked to provide a reasonable description of what they need. Most applicants will not know the actual costs of many of these services. Therefore, courts should approve otherwise appropriate applications for waiver or state payment and insert in the approval the actual or estimated amount of the fee or service, as it is known to the court.