

IN THE SUPREME COURT OF TEXAS

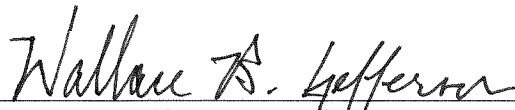
Misc. Docket No. 05-9156

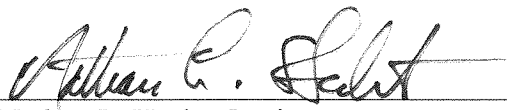
AMENDMENT TO RULE 145, TEXAS RULES OF CIVIL PROCEDURE

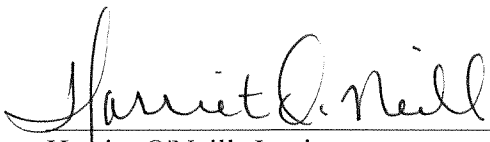
ORDERED that:

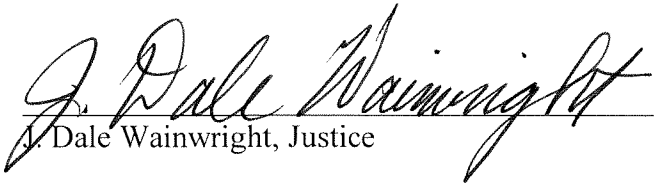
1. Rule 145 of the Texas Rules of Civil Procedure is amended as follows.
2. This amendment takes effect on December 1, 2005, in all pending cases.
3. Comments appended to these rules are intended to inform their construction and application.
4. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 19th day of September, 2005.


Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice


Harriet O'Neill, Justice


J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice


Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

**AMENDMENTS TO THE
TEXAS RULES OF CIVIL PROCEDURE**

Rule 145. Affidavit on Indigency

~~(a) *Affidavit.* In lieu of paying or giving filing security for costs of an original action, a party who is unable to afford ~~said~~ costs must ~~shall~~ file an affidavit as herein described. A "party who is unable to afford costs" is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. ~~Said affidavit, and the party's action, shall be processed by the clerk in the manner prescribed by this rule.~~~~

~~1. Procedure. Upon the filing of the affidavit, the clerk must ~~shall~~ docket the action, issue citation and provide such other customary services as are provided any party. ~~After service of citation, the defendant may contest the affidavit by filing a written contest giving notice to all parties; provided that temporary hearings will not be continued pending the filing of the contest. If the court shall find at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement) is able to afford costs, the party shall pay the costs of the action. Reasons for such a finding shall be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party shall pay the costs of the action. If the court finds that another party to the suit can pay the costs of the action, the other party shall pay the costs of the action.~~~~

~~2.(b) *Contents of Affidavit.* The affidavit must ~~shall~~ contain complete information as to the party's identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses. The affidavit shall contain the following statements: "I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn before a ~~Notary Public~~ notary public or other officer authorized to administer oaths. If the party is represented by an attorney on a contingent fee basis, due to the party's indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party.~~

~~3. Attorney's Certification. (c) *IOLTA Certificate.* If the party is represented by an attorney who is providing free legal services, without contingency, because of the party's indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the said attorney may file an IOLTA certificate confirming that the IOLTA-funded program screened the party for income eligibility under the IOLTA income guidelines ~~affidavit to that effect to assist the court in understanding the financial condition of the~~~~

party. A party's affidavit of inability accompanied by an attorney's IOLTA certificate may not be contested.

(d) Contest. The defendant or the clerk may contest an affidavit that is not accompanied by an IOLTA certificate by filing a written contest giving notice to all parties and, in an appeal under Texas Government Code, section 28.052, notice to both the small claims court and the county clerk. A party's affidavit of inability that attests to receipt of government entitlement based on indigency may be contested only with respect to the veracity of the attestation. Temporary hearings will not be continued pending the filing of the contest. If the court finds at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement based on indigency) is able to afford costs, the party must pay the costs of the action. Reasons for such a finding must be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party's action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party must pay the costs of the action. If the court finds that another party to the suit can pay the costs of the action, the other party must pay the costs of the action.

(e) Attorney's Fees and Costs. Nothing herein will preclude any existing right to recover attorney's fees, expenses or costs from any other party.

Comment – 2005

The Rule is amended to prohibit the contest of an affidavit that is accompanied by an attorney's IOLTA certificate.