

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 16-9056

ORDER ADOPTING AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE AND THE TEXAS RULES OF APPELLATE PROCEDURE AND APPROVING A FORM STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS

ORDERED that:

1. Rules of Civil Procedure 145 and 502 and Rules of Appellate Procedure 20, 25, and 32 are amended as set forth in this order. *See* TEX. GOV'T CODE § 22.004(b). The amendments are effective September 1, 2016.
2. Rule of Civil Procedure 145 and Rule of Appellate Procedure 20.1 have been completely rewritten. Therefore, this order includes only a clean version of those rules as amended. The amendments to Rule of Civil Procedure 502 and Rules of Appellate Procedure 25 and 32 are demonstrated in redline form.
3. The Court also approves the attached form Statement of Inability to Afford Payment of Court Costs.
4. The Court may change the amendments or the form before the effective date of the amendments in response to public comments. Any person may submit written comments by August 1 to Rules Attorney Martha Newton at rulescomments@txcourts.gov.
5. 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 elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: May 16, 2016.



Nathan L. Hecht, Chief Justice



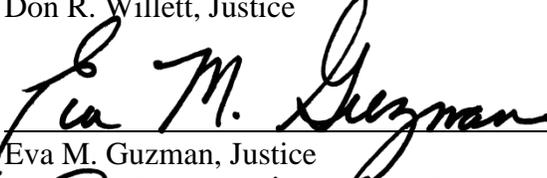
Paul W. Green, Justice



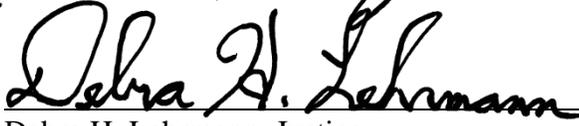
Phil Johnson, Justice



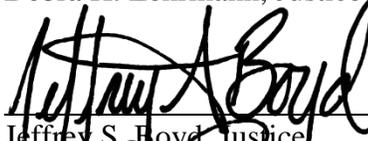
Don R. Willett, Justice



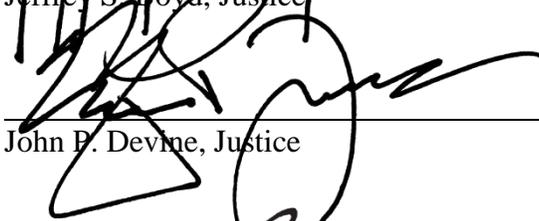
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

Texas Rule of Civil Procedure 145 is amended to read as follows.

Rule 145. Payment of Costs Not Required

- (a) *Costs Defined.* “Costs” mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.
- (b) *General Rule.* A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, “declarant” means the party filing the Statement.
- (c) *Supreme Court Form; Clerk to Provide.* The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.
- (d) *Defects.* The clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect is a ground for refusing to file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court—on its own motion or on motion of the clerk or any party—may direct the declarant to correct or clarify the Statement.
- (e) *Evidence of Inability to Afford Costs Required.* The Statement must say that the declarant cannot afford to pay costs, or can afford to pay only part of the costs, or can afford to pay costs only over time. The declarant must provide in the Statement, and, if available, in attachments to the Statement, evidence of the declarant’s inability to afford costs, such as evidence that the declarant:
 - (1) receives benefits from a government entitlement program, eligibility for which is dependent on the recipient’s means;
 - (2) is being represented in the case by an attorney who is providing free legal services to the declarant, without contingency, through:
 - (A) a provider funded by the Texas Access to Justice Foundation;
 - (B) a provider funded by the Legal Services Corporation; or

- (C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services;
 - (3) has applied for free legal services for the case through a provider listed in (e)(2) and was determined to be financially eligible but was declined representation; or
 - (4) does not have funds to afford payment of costs.
- (f) *Requirement to Pay Costs Notwithstanding Statement.* The court may order the declarant to pay costs only as follows:
- (1) *On Motion by the Attorney Ad Litem for a Parent in Certain Cases, the Clerk, or a Party.* The attorney ad litem for a parent in a suit filed by a governmental entity in which termination of the parent-child relationship or the appointment of a conservator for a child is sought, the clerk, or any party may move to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief:
 - (A) that the Statement was materially false when it was made; or
 - (B) that because of changed circumstances, the Statement is no longer true in material respects.
 - (2) *On Motion by the Court Reporter.* When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to require the declarant to prove the inability to afford costs.
 - (3) *On the Court's Own Motion.* Whenever evidence comes before the court that the declarant may be able to afford costs, or when an officer or professional must be appointed in the case, the court may require the declarant to prove the inability to afford costs.
 - (4) *Notice and Hearing.* The declarant may not be required to pay costs without an evidentiary hearing. The court must give 21 days' notice of the hearing. At the hearing, the burden is on the declarant to prove the inability to afford costs.
 - (5) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

- (6) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.
- (g) *Review of Trial Court Order.*
- (1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.
- (2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed, unless the court of appeals grants the declarant an extension.
- (3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.
- (4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.
- (h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order under (f), or the declarant has obtained a monetary recovery out of which costs can be paid.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs. Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code § 132.001—is all that is

needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

Texas Rule of Civil Procedure 502 is amended as demonstrated below.

Rule 502. Institution of Suit

* * *

Rule 502.3. Fees; Inability to Pay Afford Fees

- (a) *Fees and Statement of Inability to ~~Pay~~ Afford Payment of Court Costs.* On filing the petition, the plaintiff must pay the appropriate filing fee and service fees, if any, with the court. A plaintiff who is unable to afford to pay the fees must file a ~~sworn~~ sStatement of iInability to pay Afford Payment of Court Costs. The Statement must either be sworn to before a notary or made under penalty of perjury. Upon filing the ~~s~~Statement, the clerk must docket the action, issue citation, and provide any other customary services.
- (b) *Supreme Court Form; Contents of Statement of ~~Inability to Pay.~~* The plaintiff must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.
- (1) ~~The statement must 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.~~
- (2) ~~The statement must contain the following: "I am unable to pay court fees. I verify that the statements made in this statement are true and correct." The statement must be sworn before a notary public or other officer authorized to administer oaths or be signed under penalty of perjury.~~
- (c) *~~IOLTA~~ Certificate of Legal-Aid Provider.* If the party is represented by an attorney who is providing free legal services because of the party's indigence, without contingency, and the attorney is providing services either directly or by referral from a ~~program funded by the Interest on Lawyers Trust Accounts (IOLTA)~~ program legal-aid provider described in Rule 145(e)(2), the attorney may file an ~~IOLTA~~ a certificate confirming that the IOLTA-funded program provider screened the party for ~~income~~ eligibility under the IOLTA-income and asset guidelines established by the provider. A ~~party's s~~Statement of inability to pay that is accompanied by an attorney's IOLTA the certificate of a legal-aid provider may not be contested under (d).

- (d) *Contest.* Unless ~~an IOLTA~~ a certificate is filed under (c), the defendant may file a contest of the ~~sStatement of inability to pay~~ at any time within 7 days after the day the defendant's answer is due. If the ~~s~~Statement attests to receipt of government entitlement based on indigence, the ~~s~~Statement may only be contested with regard to the veracity of the attestation. If contested, the judge must hold a hearing to determine the plaintiff's ability to ~~pay~~ afford the fees. At the hearing, the burden is on the ~~party who filed the statement~~ plaintiff to prove ~~its~~ the inability to ~~pay~~ afford fees. The judge may, regardless of whether the defendant contests the ~~s~~Statement, examine the ~~s~~Statement and conduct a hearing to determine the plaintiff's ability to ~~pay~~ afford fees. If the judge determines that the plaintiff is able to afford the fees, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.

* * *

Texas Rule of Appellate Procedure 20 is amended to read as follows.

Rule 20. Payment of Costs Not Required

20.1 Civil Cases

- (a) *Costs Defined.* In this rule, “costs” mean filing fees charged by the appellate court. Fees charged for preparation of the appellate record are governed by Texas Rule of Civil Procedure 145.
- (b) *General Rule; Status in Trial Court Carries Forward.* A party who filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to pay costs in the appellate court unless the trial court overruled the party’s claim of indigence in an order that complies with Texas Rule of Civil Procedure 145. A party is not required to pay costs in the appellate court if the trial court ordered the party to pay partial costs or to pay costs in installments.
- (c) *Establishing the Right to Proceed Under the General Rule.* To establish the right to proceed without payment of costs under (b), a party must communicate to the appellate court clerk in writing that the party is presumed indigent under this rule. In an appeal under Section Two of these rules, the applicability of the presumption should be stated in the notice of appeal and in the docketing statement.
- (d) *Exception; Material Change in Circumstances.* An appellate court may permit a party who is not entitled to proceed under (b) to proceed without payment of costs if the party establishes that the party’s financial circumstances have materially changed since the date of the trial court’s order under Texas Rule of Civil Procedure 145.
 - (1) *Requirements.* The party must file a motion in the appellate court alleging that the party’s financial circumstances have materially changed since the date of the trial court’s order and a current Statement of Inability to Afford Payment of Court Costs that complies with Texas Rule of Civil Procedure 145. The Statement that was filed in the trial court does not meet the requirements of this rule.
 - (2) *Action by Appellate Court.* The appellate court may decide the motion based on the record or refer the motion to the trial court with instructions to hear evidence and issue findings of fact. If a motion is referred to the trial court, the appellate court must review the trial court’s findings and the record of the hearing before ruling on the motion.

Comment to 2016 Change:

The rule has been rewritten so that it only governs filing fees and any other fee charged by the appellate court. Texas Rule of Civil Procedure 145 governs a party's claim that the party is unable to afford costs for preparation of the appellate record.

Because appellate filing fees are minimal, a party that filed a Statement of Inability to Afford Payment of Court Costs in the trial court is not required to file a new Statement in the appellate court unless the trial court made affirmative findings under Texas Rule of Civil Procedure 145 that the party is able to afford all court costs and to pay those costs as they are incurred. Furthermore, because a determination of indigence by the trial court carries forward to appeal in all cases, Family Code section 107.013 is satisfied.

Experience has shown that, in most cases, a party's financial circumstances do not change substantially between the trial court proceedings and the appellate court proceedings. Nonetheless, (d) permits a party whom the trial court determined is able to afford all costs to demonstrate to the appellate court that the party's circumstances have changed since the trial court's ruling and that the party is unable to afford appellate filing fees.

Texas Rule of Appellate Procedure 25 is amended as demonstrated below.

Rule 25. Perfecting Appeal

25.1. Civil Cases

* * *

(d) *Contents of Notice.* The notice of appeal must:

- (1) identify the trial court and state the case's trial court number and style;
- (2) state the date of the judgment or order appealed from;
- (3) state that the party desires to appeal;
- (4) state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- (5) state the name of each party filing the notice;
- (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;
- (7) in a restricted appeal:
 - (A) state that the appellant is a party affected by the trial court's judgment but did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of;
 - (B) state that the appellant did not timely file either a postjudgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
 - (C) be verified by the appellant if the appellant does not have counsel.
- (8) state, if applicable, that the appellant is presumed indigent and may proceed without ~~advance payment of costs as provided in~~ under Rule 20.1(a)(3).

* * *

Texas Rule of Appellate Procedure 32 is amended as demonstrated below.

Rule 32. Docketing Statement

32.1. Civil Cases

Promptly upon filing the notice of appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

* * *

(k) if the appellant filed a Statement of Inability to Afford Payment of Court Costs in the trial court:

(1) ~~the date of filing of any affidavit of indigence~~ that the Statement was filed;

(2) the date of filing of any ~~contest~~ motion challenging the Statement;

~~(3) the date of any order on the contest; and~~

~~(4) whether the contest was sustained or overruled;~~

(3) the date of any hearing on the appellant's ability to afford costs; and

(4) if the trial court signed an order under Texas Rule of Civil Procedure 145, the court's findings regarding the appellant's ability to afford costs and the date that the order was signed.

(l) whether the appellant has filed or will file a supersedeas bond; and

(m) any other information the appellate court requires.

WARNING: Without the advice and help of an attorney, you may be putting yourself, your personal property, and your money at risk. To get a referral to an attorney, call the State Bar of Texas Lawyer Referral Information Service at 1-800-252-9690. If you are a victim of domestic violence, or if at any time you feel unsafe, you can get confidential help from the National Domestic Violence Hotline at 1-800-799-7233 or legal help from the Texas Advocacy Project Family Violence Legal Line at 1-800-374-4673.

(Print your answers in blue ink)

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: _____
(Print first and last name of the person filing the lawsuit)

In the (check one):

District Court

County Court at Law

County Court

Justice Court

And

(Court Number)

Defendant: _____
(Print first and last name of the person being sued) (County)

Statement of Inability to Afford Payment of Court Costs

WARNING: Read Texas Rules of Civil Procedure 145 and 502.3 before filling out this form.

Part 1: Your Information

Your full name: _____

Your date of birth: _____

Your address (if the place you receive mail is different from the place you actually live, list both addresses):

Your telephone number: _____

Part 2: Representation By Legal-Aid Attorney

Only fill out this section if (a) you are being represented in this case by an attorney who works for a legal-aid provider or who received your case through a legal-aid provider; or (b) you applied for representation through a legal-aid provider and were determined to be financially eligible, but the legal-aid provider was unable to take your case. If you are not being represented in this case by a legal-aid attorney or have not sought representation through a legal-aid provider, skip to Part 3.

Check the box that applies. Attach the certificate that the legal-aid provider gave you and label it "Exhibit: Legal-Aid Certificate."

"I am being represented in this case for free by an attorney who works for a legal-aid provider or who received my case through a legal-aid provider."

-or-

"I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case."

Part 3: Public Benefits, Income, and Debts

Check ALL boxes that apply and fill in the blanks describing the amounts and sources of your income.

- "I receive these **public benefits/government entitlements** that are based on indigency: SSI WIC
 Food stamps/SNAP TANF Medicaid CHIP Needs-based VA Pension
 County Assistance, County Health Care, or General Assistance (GA) Community Care via DADS
 AABD Public Housing Low-Income Energy Assistance LIS in Medicare ("Extra Help")
 Emergency Assistance Child Care Assistance under Child Care and Development Block Grant
 Other : _____

If you receive any of the above public benefits, attach proof to this form and label it "Exhibit: Proof of Public Benefits."

"My **income sources** are stated below (check all that apply).

- Unemployed since: _____
Date
- or-**
- Wages: I work as a _____ for _____
Your job title *Your employer*
- Child/spousal support My spouse's income or income from another member of my household (if available)
 Tips, bonuses Military Housing Worker's Comp Disability Unemployment Social Security
 Retirement/Pension Dividends, interest, royalties 2nd job or other income: _____
Describe

"My **income amounts** are stated below.

(A) My monthly take-home wages:	Total amount received →	\$
(B) The amount I receive each month in public benefits is:	Total amount received →	\$
(C) The amount of income from other people in my household: <i>(list this income only if other members contribute to your household income)</i>	Total amount received →	\$
(D) The amount I receive each month from other sources is:	Total amount received →	\$
(E) My TOTAL monthly income	Add all sources of income above →	= \$

About my dependents:

"The people who depend on me financially are listed below:

	<i>Name</i>	<i>Age</i>	<i>Relationship to Me</i>
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____

"My **property** includes:

	Value*
Cash	\$ _____
Bank accounts, other financial assets <i>(List)</i>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Vehicles (cars, boats) <i>(List make and year)</i>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Other property (like jewelry, stocks, etc.) <i>(Describe)</i>	\$ _____
_____	\$ _____

"My **monthly expenses** are:

	Amount
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <i>(List)</i>	\$ _____

\$

\$

Total value of property → **= \$**

Total Monthly Expenses → **= \$**

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

“My debts include: *(List debt and amount owed)*

To list any other facts you want the court to know, such as unusual medical expenses, family emergencies, etc., attach another page to this form and label it “Exhibit: Additional Supporting Facts.” Check here if you attach another page.

Part 4: Verification

Important: Please complete either Option 1 or Option 2 below. You do not have to complete both. If you complete Option 1, you must sign your name before a notary public, court clerk, or another person authorized to give oaths. If you complete Option 2, you do not have to sign your name before a notary public or any other person, but you must swear that the information in this statement is true “under penalty of perjury.” “Perjury” means lying to a judge, and it is a crime. If you swear that a statement is true “under penalty of perjury,” and you make the statement knowing that it is false, you could be prosecuted in criminal court.

Option 1

Check all boxes that apply.

- “I cannot afford to pay any court costs.”
- “I can only afford to pay some court costs. I cannot afford to pay all court costs.”
- “I can only pay court costs over time in installments.”

“I verify that the statements made in this form are true and correct.”

by _____
(Print name of person who is signing this statement.)

Do not sign until you are in front of a notary.

 _____
Signature of Person Signing Statement

Date

Notary fills out below.

State of Texas, County of _____
(Print the name of county where this statement is notarized)

Sworn to and subscribed before me, the undersigned notary, on this date: _____ / _____ / 20____ at _____ a.m./p.m.
month day year time (circle one)

 _____
Notary's Signature

Option 2

Check all boxes that apply.

- “I cannot afford to pay any court costs.”**
- “I can only afford to pay some court costs. I cannot afford to pay all court costs.”**
- “I can only pay court costs over time in installments.”**

My name is _____ (First) _____ (Middle) _____ (Last).

My date of birth is _____, and my address is _____ (Street),

_____ (City), _____ (State), _____ (Zip code),

and _____ (Country). I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____

(Month), _____ (Year).

Declarant