

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 21-9077

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## FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF CIVIL PROCEDURE RULE 145, 502.3, AND 506.4


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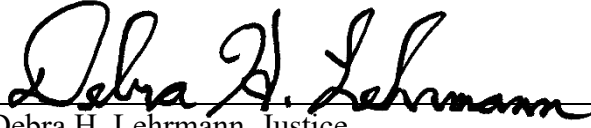
**ORDERED** that:

1. On December 23, 2020, in Misc. Dkt. No. 20-9154, the Court preliminarily approved amendments to Texas Rules of Civil Procedure 145, 502.3, and 506.4 and to the form Statement of Inability to Afford Payment of Court Costs. The Court invited public comments on the proposed amendments.
2. This order contains the final version of the amendments to Rules 145, 502.3, and 506.4. Included are a clean copy of the final amended rules and a redline demonstrating changes made to the preliminary amendments published in Misc. Dkt. No. 20-9154.
3. These amendments take effect September 1, 2021.
4. The Court will issue a separate order approving amendments to the Statement at a later date.
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*.

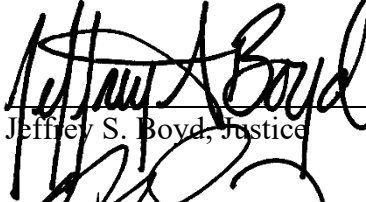
Dated: July 9, 2021



Nathan L. Hecht, Chief Justice



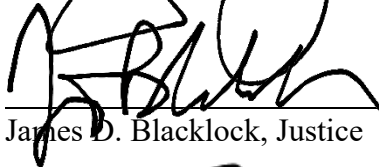
Debra H. Lehrmann, Justice



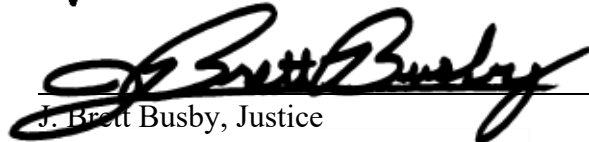
Jeffrey S. Boyd, Justice



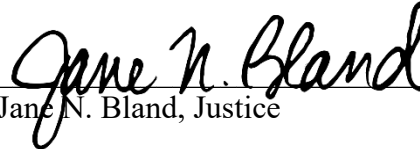
John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice

**RULE 145. PAYMENT OF COSTS NOT REQUIRED**  
*Final Amended Version*

- (a) *Costs Defined.* “Costs” mean any fee charged by the court or an officer of the court, including, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.
- (b) *Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A “sworn” Statement is one that is signed before a notary or made under penalty of perjury. In this rule, “declarant” means the party filing the Statement.
- (c) *Duties of the Clerk.* The clerk:
  - (1) must make the Statement available to any person for free without request;
  - (2) may return a Statement for correction only if it is not sworn—not for failure to attach evidence or any other reason; and
  - (3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party.
- (d) *Prima Facie Evidence of Inability to Afford Payment of Costs.* The declarant should submit with the Statement any available evidence of the declarant’s inability to afford payment of costs. An attachment demonstrating any of the following is prima facie evidence:
  - (1) the declarant or the declarant’s dependent receives benefits from a means-tested government entitlement program;
  - (2) the declarant is being represented in the case by an attorney who is providing legal services to the declarant 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; or
  - (3) the declarant has applied for free legal services for the case through a provider listed in (2) and was determined to be financially eligible but was declined representation.

- (e) *Motion to Require Payment of Costs.* A motion to require the declarant to pay costs must comply with this paragraph.
- (1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence—not merely allegations—either that the Statement was materially false when made or that because of changed circumstances, it is no longer true.
  - (2) *By the Court.* The court on its own may require the declarant to prove the inability to afford costs when 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.
- (f) *Notice; Hearing; Requirements of Order.* When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:
- (1) *Notice and Hearing.* The declarant must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.
  - (2) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.
  - (3) *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.
  - (4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."
- (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. The court of appeals may extend the deadline by 15 days

if the declarant demonstrates good cause for the extension in writing.

- (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 that complies with (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.
- (i) *Court to Designate Record.* When the declarant requests preparation of the reporter's record, the court must designate the portions to be transcribed.

### Notes and Comments

*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. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. 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 Section 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.

*Comment to 2021 Change:* A number of changes have been made to reduce frivolous challenges to a Statement, which cost time and money, and to streamline proceedings. Former paragraph (c)(4) has been deleted. Paragraph (d) has been amended to clarify that proof of any listed criterion is prima facie evidence of the declarant's inability to afford payment of costs. Paragraph (e) has been amended to require that a contest by the court reporter satisfy the same conditions as a contest by the clerk or a party. New paragraph (i) requires that the trial court designate the portions of the reporter's record to be transcribed for appeal.

The rule has also been amended to require in paragraph (f)(4) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

To accommodate these substantive changes, some paragraphs have been rearranged and relettered or renumbered. Other clarifying and stylistic changes have been made.

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### **RULE 502.3. FEES; INABILITY TO AFFORD FEES**

- (a) *Fees and Statement of Inability to 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 the fees must file a Statement of Inability to Afford Payment of Court Costs. The Statement must either be sworn to before a notary or made under penalty of perjury. Upon filing the Statement, the clerk must docket the action, issue citation, and provide any other customary services.
- (b) *Supreme Court Form; Contents of Statement.* 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 any person for free without request.
- (c) *Certificate of Legal-Aid Provider.* If the party is represented by an attorney who is providing legal services either directly or by referral from a legal-aid provider described in Rule 145(d), the attorney may file a certificate confirming that the provider screened the party for eligibility under the income and asset guidelines established by the provider. A Statement that is accompanied by the certificate of a legal-aid provider may not be contested under (d).
- (d) *Contest.*
  - (1) Unless a certificate is filed under (c), the defendant may file a contest of the Statement at any time within 7 days after the day the defendant's answer is due. If the Statement attests to receipt of government entitlement based on indigence, the Statement may only be contested with regard to the veracity of the attestation.
  - (2) If contested, the judge must hold a hearing to determine the plaintiff's ability to afford the fees. At the hearing, the burden is on the plaintiff to prove the inability to afford fees.
  - (3) The judge may, regardless of whether the defendant contests the Statement, examine the Statement and conduct a hearing to determine the plaintiff's ability to afford fees.
  - (4) 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.

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**RULE 506.4. WRIT OF CERTIORARI**

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(c) *Bond, Cash Deposit, or Sworn Statement of Inability to Pay Required. . . .*

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## RULE 145. PAYMENT OF COSTS NOT REQUIRED

Redline demonstrating changes to the version released for public comment  
in Misc. Dkt. No. 20-9154

- (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, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.
- (b) *Sworn Statement Required.* A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A “sworn” Statement is one that is signed before a notary or made under penalty of perjury. In this rule, “declarant” means the party filing the Statement.
- (c) *Duties of the Clerk.* The clerk:
- (1) must make the Statement available to any person for free without request;
  - (2) may return a Statement for correction only if it is not sworn—not for failure to attach evidence or any other reason; and
  - (3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party; ~~and~~ .
  - ~~(4) —may, without delaying compliance with (3), ask the court to direct the declarant to correct or clarify a sworn Statement that contains a material defect.~~
- (d) *Prima Facie Evidence of Inability to Afford Payment of Costs.* The declarant should submit with the Statement any available evidence of the declarant’s inability to afford payment of costs. An attachment demonstrating any of the following is prima facie evidence:
- (1) the declarant or the declarant’s dependent receives benefits from a means-tested government entitlement program;
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The rule has also been amended to require in paragraph (f)(4) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

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### **RULE 502.3. FEES; INABILITY TO AFFORD FEES**

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  - (3) The judge may, regardless of whether the defendant contests the Statement, examine the Statement and conduct a hearing to determine the plaintiff's ability to afford fees.
  - (4) 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.