STATE OF NEW YORK

10351

IN ASSEMBLY

May 18, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cook) -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the criminal procedure law, in relation to the waiver of costs, fees, and expenses for persons of insufficient means and to eliminating the phrase "poor person"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 11 of the civil practice law and rules is amended to read as follows:

[~~POOR PERSONS~~] **WAIVER OF COSTS, FEES, AND EXPENSES**

§ 2. The section heading and subdivision (a) of section 1101 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992, are amended to read as follows:

Motion [~~for permission to proceed as a poor person~~] **to waive costs, fees, and expenses**; affidavit **or affirmation**; certificate; notice; [~~waiver of fee;~~] when motion not required. (a) Motion; affidavit **or affirmation**. Upon motion of any [~~person~~] **party**, the court in which an action is triable, or to which an appeal has been or will be taken, may [~~grant permission~~] **waive the costs, fees, and expenses if such party has insufficient means** to [~~proceed as a poor person~~] **pay such costs, fees, and expenses**. Where a motion [~~for leave~~] to [~~appeal as a poor person~~] **waive costs, fees, and expenses** is [~~brought to~~] **made in** the court in which an appeal has been or will be taken, such court shall hear such motion on the merits and shall not remand such motion to the trial court for consideration. The moving party shall file an affidavit **or affirmation** setting forth the amount and sources of [~~his or her~~] **such party's** income **and assets** and listing [~~his or her~~] **any real** property **owned by such party** with its value; that [~~he or she is unable~~] **such party lacks sufficient means** to pay the costs, fees, and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient facts so that the merit of the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees, and expenses. An executor, administrator, or other representative may move for [~~permission~~] a waiver of costs, fees, and expenses on behalf of a deceased, infant, or incompetent [~~poor~~] person.

§ 3. Section 1102 of the civil practice law and rules, subdivision (b) as amended by chapter 681 of the laws of 1969, and subdivisions (c) and (d) as amended by chapter 773 of the laws of 1965, is amended to read as follows:

§ 1102. Privileges of [~~poor person~~] party with insufficient means to pay costs, fees, and expenses in an action or on appeal. (a) Attorney. [~~The~~] Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the court, in its order [~~permitting a person to proceed as a poor person~~] determining the motion, may assign an attorney to the moving party.

(b) Stenographic transcript. Where a [~~party has been permitted by order to appeal as~~] court grants a [~~poor person~~] motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the court clerk, within two days after the filing of [~~said~~] such court's order with [~~him~~] the court clerk, shall so notify the court stenographer, who, within twenty days of such notification shall make and certify two typewritten transcripts of the stenographic minutes of said trial or hearing, and shall deliver one of said transcripts to the [~~poor person~~] moving party or [~~his~~] such moving party's attorney, and file the other with the court clerk together with an affidavit of the fact and date of such delivery and filing. The expense of such transcripts shall be a county charge or, in the counties within the city of New York, a city charge, as the case may be, payable to the stenographer out of the court fund upon the certificate of the judge presiding at the trial or hearing. A [~~poor person~~] moving party may be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal, the fee therefor to be paid by the county or, in the counties within the city of New York by the city, as the case may be, in the same manner as is paid for transcripts on appeal. Notwithstanding this or any other provision of law, fees paid for stenographic transcripts with respect to those proceedings specified in paragraph [~~(a)~~] a of subdivision one of section thirty-five of the judiciary law shall be paid by the state in the manner prescribed by subdivision four of section thirty-five of the judiciary law.

(c) Appeals. On an appeal or motion for permission to appeal where a [~~poor person~~] court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the moving party may submit typewritten briefs and appendices, furnishing one legible copy for each appellate justice.

(d) Costs and fees. [~~A poor person~~] Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, the moving party shall not be liable for the payment of any costs or fees unless a recovery by judgment or by settlement is had in [~~his~~] such moving party's favor, in which event the court may direct [~~him~~] such party to pay out of the recovery all or part of the costs and fees, a reasonable sum for the services and expenses of [~~his~~] any attorney assigned to such party and any sum expended by the county or city under subdivision (b) of this section.

§ 4. Section 1103 of the civil practice law and rules is amended to read as follows:

§ 1103. Distribution of recovery in favor of [~~poor person~~] party with insufficient means to pay costs, fees, and expenses. [~~Any~~] Where a court grants a motion pursuant to subdivision (a) of section one thousand one hundred one of this article, recovery by judgment or by settlement had in favor of [~~a poor person,~~] the moving party shall be paid to the clerk of the court in which the order [~~permitting~~] determining the [~~person to proceed as a poor person~~] motion was entered, to await distribution pursuant to court order.

§ 5. The section heading and subdivision 1 of section 380.55 of the criminal procedure law, as amended by chapter 616 of the laws of 2021, are amended to read as follows:

Application for [~~poor person relief~~] waiver of costs, fees, and expenses on appeal.

1. Where counsel has been assigned to represent a defendant in a criminal action on the ground that the defendant is financially unable to retain counsel, the court may in its discretion at the time of sentencing entertain an application to grant the defendant [~~poor person relief~~] waiver of costs, fees, and expenses on appeal. As part of an application for such relief, assigned counsel must represent that the defendant continues to be eligible for assignment of counsel and that granting the application will expedite the appeal. If the court grants the application, it shall file a written order and shall provide a copy of the order to the appropriate appellate court. The denial of an application shall not preclude the defendant from making a de novo application for [~~poor person relief~~] waiver of costs, fees, and expenses to the appropriate appellate court.

§ 6. This act shall take effect immediately.