

§ 1101. Motion to waive costs, fees, and expenses; affidavit or affirmation; certificate; notice; when motion not required. (a) Motion; affidavit or affirmation. Upon motion of any party, the court in which an action is triable, or to which an appeal has been or will be taken, may waive the costs, fees, and expenses if such party has insufficient means to pay such costs, fees, and expenses. Where a motion to waive costs, fees, and expenses is 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 such party's income and assets and listing any real property owned by such party with its value; that 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 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 a waiver of costs, fees, and expenses on behalf of a deceased, infant, or incompetent person.

(b) Certificate. The court may require the moving party to file with the affidavit a certificate of an attorney stating that the attorney has examined the action and believes there is merit to the moving party's contentions.

(c) Notice. Except as provided in subdivisions (d) and (e) of this section, if an action has already been commenced, notice of the motion shall be served on all parties, and notice shall also be given to the county attorney in the county in which the action is triable or the corporation counsel if the action is triable in the city of New York.

* (d) Waiver of fee in certain cases. Except as otherwise provided in subdivision (f) of this section, if applicable, a plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and

complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order.

* NB Effective until September 1, 2027

* (d) Waiver of fee in certain cases. A plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order.

* NB Effective September 1, 2027

(e) When motion not required. Where a party is represented in a civil action by a legal aid society or a legal services or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, all fees and costs relating to the filing and service shall be waived without the necessity of a motion and the case shall be given an index number, or, in a court other than the supreme or county court, an appropriate filing number, provided that a determination has been made by such society, organization or attorney that such party is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, and that an attorney's certification that such determination has been made is filed with the clerk of the court along with the summons and complaint

or summons with notice or third-party summons and complaint or otherwise provided to the clerk of the court. Where an attorney certifies, pursuant to section eleven hundred eighteen of the family court act, and in accordance with procedures of the appropriate appellate division, that a party or child who is the subject of an appeal has been represented in the family court by assigned counsel or by a legal aid society or a legal services or other nonprofit organization, which has as its primary purpose the furnishing of legal services to indigent persons, or by private counsel working on behalf of or under the auspices of such society or organization, and, in the case of a counsel assigned to an adult party, that the party continues to be indigent, the party or child shall be presumed eligible for poor person relief pursuant to this section.

* (f) Fees for incarcerated individuals. 1. Notwithstanding any other provision of law to the contrary, a federal, state or local incarcerated individual under sentence for conviction of a crime may seek to commence his or her action or proceeding by paying a reduced filing fee as provided in paragraph two of this subdivision. Such incarcerated individual shall file the form affidavit referred to in subdivision (d) of this section along with the summons and complaint or summons with notice or third-party summons and complaint or petition or notice of petition or order to show cause. As part of such application, the incarcerated individual shall indicate the name and mailing address of the facility at which he or she is confined along with the name and mailing address of any other federal, state or local facility at which he or she was confined during the preceding six month period. The case will be given an index number if applicable, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. Upon receipt of the application, the court shall obtain from the appropriate official of the facility at which the incarcerated individual is confined a certified copy of the incarcerated individual's trust fund account statement (or institutional equivalent) for the six month period preceding filing of the incarcerated individual's application. If the incarcerated individual has been confined for less than six months at such facility, the court shall obtain additional information as follows:

(i) in the case of a state incarcerated individual who has been

transferred from another state correctional facility, the court shall obtain a trust fund account statement for the six month period from the central office of the department of corrections and community supervision in Albany; or

(ii) in the case of a state incarcerated individual who is newly transferred from a federal or local correctional facility, the court shall obtain any trust fund account statement currently available from such facility. The court may, in its discretion, seek further information from the prior or current facility.

2. If the court determines that the incarcerated individual has insufficient means to pay the full filing fee, the court may permit the incarcerated individual to pay a reduced filing fee, the minimum of which shall not be less than fifteen dollars and the maximum of which shall not be more than fifty dollars. The court shall require an initial payment of such portion of the reduced filing fee as the incarcerated individual can reasonably afford or shall authorize no initial payment of the fee if exceptional circumstances render the incarcerated individual unable to pay any fee; provided however, that the difference between the amount of the reduced filing fee and the amount paid by the incarcerated individual in the initial partial payment shall be assessed against the incarcerated individual as an outstanding obligation to be collected either by the superintendent or the municipal official of the facility at which the incarcerated individual is confined, as the case may be, in the same manner that mandatory surcharges are collected as provided for in subdivision five of section 60.35 of the penal law. The court shall notify the superintendent or the municipal official of the facility where the incarcerated individual is housed of the amount of the reduced filing fee that was not directed to be paid by the incarcerated individual. Thereafter, the superintendent or the municipal official shall forward to the court any fee obligations that have been collected, provided however, that:

(i) in no event shall the filing fee collected exceed the amount of fees required for the commencement of an action or proceeding; and

(ii) in no event shall an incarcerated individual be prohibited from proceeding for the reason that the incarcerated individual has no assets and no means by which to pay the initial partial filing fee.

3. The institution at which an incarcerated individual is confined, or the central office for the department of corrections and community supervision, whichever is applicable, shall promptly provide the trust fund account statement to the incarcerated individual as required by this subdivision.

4. Whenever any federal, state or local incarcerated individual obtains a judgment in connection with any action or proceeding which exceeds the amount of the filing fee, paid in accordance with the provisions of this subdivision for commencing such action or proceeding, the court shall award to the prevailing incarcerated individual, as a taxable disbursement, the actual amount of any fee paid to commence the action or proceeding.

5. The provisions of this subdivision shall not apply to a proceeding commenced pursuant to article seventy-eight of this chapter which alleges a failure to correctly award or certify jail time credit due an incarcerated individual, in violation of section six hundred-a of the correction law and section 70.30 of the penal law.

* NB Expires September 1, 2027