



Judicial Impact Statement

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Uniform Determination of Indigency in Civil Filings

DRAFT

Looking for sponsor

Proposed Title Information

To amend R.C. 1901.26, 1907.24, 2323.30, 2323.31, 2323.311, and 2746.001 to modernize the determination of indigency in civil filings and make it uniform across all Ohio counties.

Background

Current law provides for a uniform determination of indigency in criminal cases, but not in civil filings such as divorces or requests to seal records. The Ohio Supreme Court and its Access to Justice Task Force have made access to justice a priority, with a commitment to helping indigent Ohioans access the courts for a variety of non-criminal issues.

Judicial Impact

A majority of Ohio courts waive the prepayment of filing fees with an affidavit of indigency. However, the absence of an established, uniform statewide process results in unnecessary barriers to the courts for indigent Ohioans. A uniform system would improve access to justice, the overall administration of justice, and public confidence in the courts.

Conclusion

The Ohio Judicial Conference recommends the following changes to the current statute concerning affidavits of indigency in civil filings:

1901.26 Costs.

(A) Subject to division (E) of this section, costs in a municipal court shall be fixed and taxed as follows:

(1) (a) The municipal court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (C) of this section, and in all other cases, by rule, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

(b) (i) The legislative authority of a municipal corporation may by ordinance establish a schedule of fees to be taxed as costs in any civil, criminal, or traffic action or proceeding in a municipal court for the performance by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

sections 311.17 and 509.15 of the Revised Code. No fee in the schedule shall be higher than the fee specified in section 311.17 of the Revised Code for the performance of the same service by the sheriff. If a fee established in the schedule conflicts with a fee for the same service established in another section of the Revised Code or a rule of court, the fee established in the other section of the Revised Code or the rule of court shall apply.

(ii) When an officer or employee of a municipal police department or marshal's office performs in a civil, criminal, or traffic action or proceeding in a municipal court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this or any other section of the Revised Code, the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service shall be taxed as costs in the case. The clerk of the court shall pay those legal fees and other expenses, when collected, into the general fund of the municipal corporation that employs the officer or employee.

(iii) If a bailiff of a municipal court performs in a civil, criminal, or traffic action or proceeding in that court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this section or any other section of the Revised Code, the fee for the service is the same and is taxable to the same extent as if the service had been performed by an officer or employee of the police department or marshal's office of the municipal corporation in which the court is located. The clerk of that court shall pay the fee, when collected, into the general fund of the entity or entities that fund the bailiff's salary, in the same prorated amount as the salary is funded.

(iv) Division (A)(1)(b) of this section does not authorize or require any officer or employee of a police department or marshal's office of a municipal corporation or any bailiff of a municipal court to perform any service not otherwise authorized by law.

(2) The municipal court, by rule, may require an advance deposit for the filing of any civil action or proceeding and publication fees as provided in section 2701.09 of the Revised Code. The court shall waive the requirement for advance deposit ~~upon affidavit or other evidence that a party is unable to make the required deposit.~~ for a party that qualifies as an Indigent Litigant as set forth in section 2323.311 of the Revised Code.

(3) When a jury trial is demanded in any civil action or proceeding, the party making the demand may be required to make an advance deposit as fixed by rule of court, unless, ~~upon affidavit or other evidence, the court concludes that the party is unable to make the required deposit~~ the person qualifies as an Indigent Litigant as set forth in section 2323.311 of the Revised Code. If a jury is called, the fees of a jury shall be taxed as costs.

(4) In any civil or criminal action or proceeding, each witness shall receive twelve dollars for each full day's attendance and six dollars for each half day's attendance. Each witness in a municipal court that is not a county-operated municipal court also shall receive fifty and one-half cents for each mile necessarily traveled to and from the witness's place of residence to the action or proceeding.

(5) A reasonable charge for driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in any proceeding may be taxed as part of the costs in a trial of the cause, in an amount that shall be fixed by rule of court.

(6) Chattel property seized under any writ or process issued by the court shall be preserved pending final disposition for the benefit of all persons interested and may be placed in storage when necessary or proper for that preservation. The custodian of any chattel property so stored shall not be required to part with the possession of the property until a reasonable charge, to be fixed by the court, is paid.

(7) The municipal court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party.

(8) Charges for the publication of legal notices required by statute or order of court may be taxed as part of the costs, as provided by section 7.13 of the Revised Code.

(B)(1) The municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the municipal court offers a special program or service in cases of a specific type, the municipal court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The municipal court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (B) of this section shall be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the municipal court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (B) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

(C) The municipal court shall collect in all its divisions except the small claims division the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. The municipal court shall collect in its small claims division the sum of eleven dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. This division does not apply to any execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced payment of all filing fees in the action or proceeding for an Indigent litigant as set forth in section 2323.311 of the Revised Code. All such moneys collected during a month except for an amount equal to up to one per cent of those moneys retained to cover administrative costs shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation. The treasurer of state shall deposit four per cent of the funds collected under this division to the credit of the civil case filing fee fund established under section 120.07 of the Revised Code and ninety-six per cent of the funds collected under this division to the credit of the legal aid fund established under section 120.52 of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division. If the court fails to transmit to the treasurer of state the moneys the court collects under this division in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation, the court shall forfeit the moneys the court retains under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division, and shall transmit to the treasurer of state all moneys collected under this division, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

(D) In the Cleveland municipal court, reasonable charges for investigating titles of real estate to be sold or disposed of under any writ or process of the court may be taxed as part of the costs.

(E) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the municipal court shall charge the fees and perform the other duties specified in those sections.

(F) As used in this section:

(1) "Full day's attendance" means a day on which a witness is required or requested to be present at an action or proceeding before and after twelve noon, regardless of whether the witness actually testifies.

(2) "Half day's attendance" means a day on which a witness is required or requested to be present at an action or proceeding either before or after twelve noon, but not both, regardless of whether the witness actually testifies.

1907.24 Schedule of fees and costs.

(A) Subject to division (C) of this section, a county court shall fix and tax fees and costs as follows:

(1) The county court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (C) of this section and, in all other cases, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

(2) The county court by rule may require an advance deposit for the filing of a civil action or proceeding and publication fees as provided in section 2701.09 of the Revised Code. ~~The court may waive an advance deposit requirement upon the presentation of an affidavit or other evidence that establishes that a party is unable to make the requisite deposit.~~ The court shall waive any advance deposit for a party who qualifies as an Indigent Litigant as set forth in section 2323.311 of the Revised Code.

(3) When a party demands a jury trial in a civil action or proceeding, the county court may require the party to make an advance deposit as fixed by rule of court, unless ~~the court concludes, on the basis of an affidavit or other evidence presented by the party, that the party is unable to make the requisite deposit~~ person qualifies as an Indigent Litigant as set forth in section 2323.311 of the Revised Code. If a jury is called, the county court shall tax the fees of a jury as costs.

(4) In a civil or criminal action or proceeding, the county court shall fix the fees of witnesses in accordance with sections 2335.06 and 2335.08 of the Revised Code.

(5) A county court may tax as part of the costs in a trial of the cause, in an amount fixed by rule of court, a reasonable charge for driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in a proceeding.

(6) The court shall preserve chattel property seized under a writ or process issued by the court pending final disposition for the benefit of all interested persons. The court may place the chattel property in storage when necessary or proper for its

preservation. The custodian of chattel property so stored shall not be required to part with the possession of the property until a reasonable charge, to be fixed by the court, is paid.

(7) The county court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party.

(8) The court may tax as part of costs charges for the publication of legal notices required by statute or order of court, as provided by section 7.13 of the Revised Code.

(B)

(1) The county court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the county court offers a special program or service in cases of a specific type, the county court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The county court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (B) of this section shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the county court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (B) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

(C) Subject to division (E) of this section, the county court shall collect in all its divisions except the small claims division the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. Subject to division (E) of this section, the county court shall collect in its small claims division the sum of eleven dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the state public defender. This division does not apply to any execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced payment of all filing fees in the action or proceeding for an Indigent Litigant as set forth in section 2323.311 of the Revised Code. All such moneys collected during a month except for an amount equal to up to one

per cent of those moneys retained to cover administrative costs shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation. The treasurer of state shall deposit four per cent of the funds collected under this division to the credit of the civil case filing fee fund established under section 120.07 of the Revised Code and ninety-six per cent of the funds collected under this division to the credit of the legal aid fund established under section 120.52 of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division. If the court fails to transmit to the treasurer of state the moneys the court collects under this division in a manner prescribed by the treasurer of state or by the Ohio legal assistance foundation, the court shall forfeit the moneys the court retains under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division, and shall transmit to the treasurer of state all moneys collected under this division, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

(D) The county court shall establish by rule a schedule of fees for miscellaneous services performed by the county court or any of its judges in accordance with law. If judges of the court of common pleas perform similar services, the fees prescribed in the schedule shall not exceed the fees for those services prescribed by the court of common pleas.

(E) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the county court shall charge the fees and perform the other duties specified in those sections.

2323.30 Costs secured by plaintiff.

In all actions in which the plaintiff is a nonresident of the county in which the action is brought, a partnership suing by its company name, an insolvent corporation, or any party required to furnish security under section 2323.31 of the Revised Code, the plaintiff shall deposit cash or furnish security for costs. The surety must be a resident of the county and approved by the clerk. The obligation of the surety shall be complete by indorsing the summons or signing his name on the petition as surety for costs. The surety shall be bound for the payment of the costs which are adjudged against the plaintiff in the court in which the action is brought, or in any other court to which it is carried, and for all the costs taxed against the plaintiff in such action, whether he obtains a judgment or not. When a plaintiff makes an application to be qualified as an Indigent Litigant as set forth in section 2323.311 of the Revised Code, affidavit of inability either to give security or a cash deposit to secure costs, the clerk shall receive and file the petition civil action or proceeding. The affidavit shall be filed with it and treated as are similar papers. If the court approves the application, the clerk shall waive the advance deposit and the court shall proceed on the action. If the application is denied, the clerk shall retain the filing, and the court shall issue an order granting the denied applicant thirty days to make a required deposit, prior to any dismissal or other action on the filing.

2323.31 Cash deposits as security.

The court of common pleas by rule may require an advance deposit for the filing of any civil action or proceeding, or responsive action by a defendant. On motion of a party, the defendant, and if satisfied that such deposit is insufficient, the court may require it to be increased from time to time, so as to secure all costs that may accrue in the cause, or may require personal security to be given; but if a plaintiff party makes an application to be qualified as an Indigent Litigant as set forth in section 2323.311 of the Revised Code, makes an affidavit of inability either to prepay or give security for costs, the clerk of the court shall receive and file the civil action or proceeding, or responsive action by a defendant petition. Such affidavit shall be filed with the petition, and treated as are similar papers in such cases. If the court approves the application, the clerk shall waive the advance deposit and the court shall proceed on the action. If the application is denied, the clerk shall retain

the filing, and the court shall issue an order granting the denied applicant thirty days to make a required deposit, prior to any dismissal or other action on the filing.

2323.311 Cost Deposits for Indigent Litigant

(A) For purposes of this section, “Indigent Litigant” is defined as a litigant who is unable to make an advance deposit for costs as set forth in a civil action.

(B)(1) To qualify as an Indigent Litigant, the applicant shall file with the court in which the filing is made an Affidavit of Indigency in a form approved by the Supreme Court of Ohio, or, until the Court approves such a form, a form requesting substantially the same financial information as the Financial Disclosure/Affidavit of Indigency form used by the Public Defender of Ohio for appointment of Counsel in a criminal case, or comparable information on a form as approved by the Supreme Court of Ohio.

(B)(2) The Affidavit of Indigency shall be filed with the court by the applicant’s attorney, or if the litigant is proceeding pro se, by the applicant.

(B)(3) Upon the filing of an action and affidavit under division (B)(1) of this section the clerk shall accept the civil action for filing.

(B)(4)(a) The affidavit as filed pursuant to (B)(2) of this section shall be reviewed by a judge or magistrate, who shall approve or deny the application. The judge or magistrate shall grant the application if the applicant’s gross income does not exceed 187.5 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services for the State of Ohio and the applicant’s monthly expenses are equal to or in excess of the applicant’s liquid assets as defined in section 120-1-03(C)(2) of the Ohio Administrative Code or substantially similar subsequent section. If the application is approved, the clerk shall waive the advance deposit and the court shall proceed on the action. If the application is denied, the clerk shall retain the filing, and the court shall issue an order granting the denied applicant thirty days to make a required deposit, prior to any dismissal or other action on the filing.

(B)(4)(b) Following the filing of the civil action with the clerk, the judge or magistrate may at any time while the action is pending, on motion of the applicant, on motion of the opposing party, or on the court’s own motion, conduct a hearing to inquire into the applicant’s status as an Indigent Litigant. The judge or magistrate shall affirm the applicant’s status as an indigent litigant if the applicant’s gross income does not exceed 187.5 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services for the State of Ohio and the applicant’s monthly expenses are equal to or in excess of the applicant’s liquid assets as defined in section 120-1-03(C)(2) of the Ohio Administrative Code. If the court finds that the applicant qualifies as an indigent litigant, the court shall proceed on the action. If the court finds that the applicant no longer qualifies as an indigent litigant, the clerk shall retain the filing, and the court shall issue an order granting the applicant thirty days to make a required deposit, prior to any dismissal or other action on the filing.

(B)(5) Any indigency finding by the court shall excuse the indigent litigant from the obligation to prepay any subsequent fee or cost arising in the case unless the court addresses that fee or cost specifically in an order.

(C) If the Indigent Litigant as the prevailing party proceeds with an execution on said Judgment as set forth in Chapters 2327, 2329, 2331, and 2333 of the Revised Code, to provide for the recovery of applicable costs, any payment on any execution in favor of the Indigent Litigant shall be made through the clerk of the court, who shall apply said payment to any outstanding costs prior to any disbursement to the Indigent Litigant. This requirement may be waived upon entry of the court by a judge or magistrate. This remedy set forth in this division shall not be the exclusive remedy for the clerk of court. The clerk of court shall have all remedies available under the law.

2746.001 All courts; Cost Deposits for Indigent Civil Litigants

If with respect to the filing of any civil action or proceeding, or responsive action by a defendant, in any court of record, a party qualifies as an Indigent Litigant as set forth in section 2323.311 of the Revised Code, the clerk of the court shall receive and file the civil action or proceeding and the court shall waive any advance deposit for filing of the action or proceeding, payment in advance for any taxable costs, including fees for publication or service of process by other means, and payment in advance of any fee required in connection with prosecuting or advancing the action or proceeding.