

REQUESTING A WAIVER OF FILING AND SERVICE FEES  
CAO INSTRUCTION #7

The law allows for a waiver of the fees payable to the court for filing paperwork and to the local sheriff for serving paperwork on the other party if the judge assigned to your case decides you are truly unable to afford those fees. (This is often called filing “in forma pauperis.”) You must get an order waiving the fees. To get a fee waiver order, you must complete a Motion and Affidavit for Fee Waiver and prepare an Order Re: Fee Waiver for the judge to sign. In the Affidavit, you will answer many questions about your income from all sources, your property, the number of people relying on you for support, and your ordinary and extraordinary living expenses. (Often a person seeking divorce is living apart from his or her spouse and has no access to the spouse’s income and assets. If that is your situation, remember to include only income, property and those resources that actually are available to you. Do not include income and property of your spouse to which you have no access.) If you have long-standing debts, regardless of whether you are making payments on them now, be sure to list them. Also remember to include such expenses as driver’s licenses, automobile license plates, and car insurance. Divide the total of those occasional expenses so you know what they would be each month. Your total list of expenses and your total list of income must demonstrate to the Court that, once you have met your other expenses, you have no money left over to file your paperwork.

1. Complete the form, Motion and Affidavit for Fee Waiver. Fill in ALL BLANKS. The judge may not consider your request if you do not answer all the questions. Complete the form, Order Re: Fee Waiver. Complete the top part of the form. Check the box to indicate if you are the Plaintiff or Defendant. Fill in your name and mailing address in the Clerk’s Certificate of Service.
2. Sign the Motion and Affidavit in front of a Notary Public. Make a copy of each document.
3. Prepare an envelope addressed to yourself with a postage stamp affixed. The copy of the Order Re: Fee Waiver, either granted or denied, can then be mailed to you by the judge’s clerk.
4. Take the signed and notarized Motion and Affidavit for Fee Waiver, the completed Order Re: Fee Waiver, and the self-addressed postage paid envelope, your copies, and the document(s) you need to file (for example a Complaint with Summons or an Answer), to the District Court Clerk’s office. Ask the clerk to submit the documents to a judge. The judge may sign the Order without a hearing. If the judge has any questions, you may have to appear for a court hearing. The court clerk will schedule your case before the judge at the earliest opportunity. On the date scheduled for your hearing, be sure to arrive at the courthouse a few minutes early. Check in with the court clerk to find out which courtroom you should be in. When the bailiff calls your case to be heard, you will then step forward, be sworn in, and be questioned by the judge about your Affidavit. If you are receiving public assistance, you should be prepared to provide the court with copies of the documents showing what assistance you receive. The judge may ask you questions about your expenses and lifestyle. Answer all questions respectfully and to the best of your ability. If the judge signs the Order, return to the court clerk after your hearing with the Order and The Clerk will file your original paperwork.
5. If the judge orders the waiver of prepaid fees, the clerk will file your paperwork.

If you are filing a Complaint, you will need to go to the courthouse and pick up your copies for service on the defendant (or you can provide a large self-addressed envelope with enough postage for the clerk to mail the copies of the Summons and Complaint to you so you can arrange service). **or**

If the judge denies your request for the fee waiver you will be required to pay the filing fee before your paperwork is filed.

If you need to file a response, be aware of the time limits. You should allow sufficient time to request the fee waiver before the expiration of any time limitations you need to meet. It is your responsibility to allow enough time for the process of getting the fees waived or to pay the filing fee within the time limit. Only you are responsible for making sure time limits are met. Requesting a fee waiver will not stop the time from running, and a default can be entered against you if the time limit allowed to file a response expires. You could then be prevented from filing your response.