

The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
Owned and operated by Greene County Bar Association
Greene County Courthouse, Waynesburg, PA 15370

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April 21, 2022



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Serving the Legal Community of Greene County
Since October 1982

The Greene Reports

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COURT OF COMMON PLEAS
Honorable Louis Dayich, President Judge
Honorable Jeffry N. Grimes, Judge

MOTIONS

Criminal & Civil & O.C.:
April 25 and April 27, 2022

CRIMINAL

Arraignments: April 25, 2022
ARDs: May 9, 2022
ARD Revocations: May 9, 2022
Parole Violations: April 25, 2022
Plea Court: May 10-12, 2022
License Suspension Appeals: June 21, 2022
Argument Court: May 23, 2022

ORPHANS

Accounts Nisi: May 2, 2022
Accounts Absolute: May 12, 2022

SUPREME COURT
SUPERIOR COURT
COMMONWEALTH COURT

Convenes in Pgh.: June 7, 2022
Convenes in Pgh.: May 10-11, 2022
Convenes in Pgh.: May 16-20, 2022

THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenerreports@yahoo.com

EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

THE GREENE COUNTY BAR ASSOCIATION

Christopher M. Simms, President
Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Blake Birchmeier, Treasurer
Jessica L. Phillips, Ex-Officio

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DEED TRANSFERS

The following property transfers have been recorded in the Greene County Recorder of Deeds office.

ALEPPO TOWNSHIP

Rhonda K. Shough to Alpine Energy Investments LLC, et ux., 11.7535 Acres, O&G, \$117,535.00 (4-14-22)
John D. McLaughlin, et ux., to Alpine Energy Investments LLC, 8.075 Acres, O&G, \$80,750.00 (4-14-22)

CUMBERLAND TOWNSHIP

Joyce D. Fortney to Raymond D. Chambers, et ux., Lots 45-46 in Gwynne Addition, \$120,000.00 (4-13-22)
Joseph R. Black, et ux., to Bryan McCannon, et ux., Lot 434 in Crucible, \$22,000.00 (4-13-22)
William J. Malinosky, et ux., to Eric B. Davis, et ux., 2 Lots, \$50,000.00 (4-18-22)
Michael Bowers, et ux., to Nina Rose Jordan, .100 Acre, \$4,400.00 (4-19-22)

FRANKLIN TOWNSHIP

James W. Wood, et ux., to Frank Joseph Patrick, Sr., et ux., Unit 1 in Willow Grove Plan, \$145,000.00 (4-13-22)
First Federal Savings & Loan to Heather L. Gilbert, et ux., Lots 24-27 in Block D North Waynesburg, \$32,600.00 (4-14-22)
Robert D. Cowell Irrevocable Income Only Trust, et al., to John H. Higgins, et ux., Tracts, \$100,000.00 (4-18-22)

Cameron International Corporation to John D. Higgins, Lot, \$315,000.00 (4-18-22)

FREEPORT TOWNSHIP

Jeremiah J. Allison, et al., to EQM Gathering OPCO LLC, R/W, 13.52 Acres, \$34,000.00 (4-18-22)

FREEPORT AND SPRINGHILL TOWNSHIPS

Ralph Lewis Hamilton to MMA Mineral Group, LLC, 4 Tracts, O&G, \$475.00 (4-13-22)

GILMORE TOWNSHIP

Harold Daniel Roupe to Foss Minerals, LLC, 62 Acres, O&G, \$1,532.97 (4-18-22)

JACKSON TOWNSHIP

Gary L. Kraus to EQM Gathering OPCO LLC, R/W, 85.59 Acres, \$300,000.00 (4-18-22)

MONONGAHELA TOWNSHIP

Alexis Puher to Roy Richmond, 1.27 Acres, \$330,000.00 (4-13-22)
Paul P. Chekosky, et ux., to William L. Harwood, 2 Tracts, \$75,000.00 (4-14-22)

MORGAN TOWNSHIP

Charles J. Duffey to Daniel R. Adamson, Sr., et ux., .3475 Acre, \$220,000.00 (4-13-22)

SPRINGHILL TOWNSHIP

John Matthew Brant to EQM Gathering OPCO LLC, R/W, Tracts, \$348,100.00 (4-18-22)
John M. Brant, et ux., to EQM Gathering OPCO LLC, R/W, Tracts, \$100,000.00 (4-18-22)
Kathy Lynn Death to Foss Minerals LLC, Tracts, O&G, \$791.67 (4-18-22)
William Reid White, Jr. to Foss Minerals LLC, Tracts, O&G, \$1,055.56 (4-18-22)

WASHINGTON TOWNSHIP

Betty Jean White by Atty-In-Fact, et ux., to Nancy M. Koenig, Lot, \$125,000.00 (4-14-22)

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WAYNE TOWNSHIP

Joan S. Celento to EQM Gathering OPCO LLC, R/W, 37.51 Acres, \$39,000.00 (4-18-22)
George W. Ellis, et ux., to EQM Gathering OPCO LLC, R/W, 112.25 Acres, \$66,981.60 (4-18-22)

Vaughn T. Naylor to EQM Gathering OPCO LLC, R/W, 66.09 Acres, \$9,000.00 (4-18-22)

ESTATE NOTICES

NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

HOY, CARL W. JR.

Late of Franklin Township, Greene County, Pennsylvania

Executrix: Phyllis Kay Kamerer, 5550 Route 85 Highway, Home, PA 15747

Attorney: Christopher Michael Simms, Esquire, POLLOCK MORRIS BELLETTI & SIMMS, LLC, 54 South Washington Street, Waynesburg, PA 15370

TOPORCER, JOHN

Late of Morgan Township, Greene County, Pennsylvania

Executor: Randy J. Toporder, 123 Stillwagon, Road, Ruffs Dale, PA 15679

Attorney: Theodore M. Treovich, Esquire, 511 Greenfield Avenue, Pittsburgh, PA 15207

SECOND PUBLICATION

KELLEY, THEODORE, SR., A/K/A THEODORE DONALD KELLEY, SR.

Late of Greensboro, Greene County, Pennsylvania

Executrix: Laura Sarapa, Post Office Box 451, Bobtown, PA 15351

Attorney: David F. Pollock, Esquire, POLLOCK MORRIS BELLETTI & SIMMS, LLC, 54 South Washington Street, Waynesburg, PA 15370

PHILLIPS, ALPHA J.

Late of Waynesburg, Greene County, Pennsylvania

Executor: Shawn A. Phillips, 1196 Jefferson Road, Jefferson, PA 15344

Attorney: David F. Pollock, Esquire, POLLOCK MORRIS BELLETTI & SIMMS, LLC, 54 South Washington Street, Waynesburg, PA 15370

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THIRD PUBLICATION

BUDAY, JUDITH ANN

Late of Cumberland Township, Greene County, Pennsylvania

Executrix: Stephanie L. Chambers, 414 North Eighty Eight Road, Carmichaels, PA 15320

Attorney: Isaac Stockdale, Esquire, Peacock Keller, LLP, 95 West Beau Street, Suite 600, Washington, PA 15301

HULL, KAREN SUE A/K/A KAREN S. HULL

Late of Waynesburg Borough, Greene County, Pennsylvania

Executrix: Connie H. Morris, 495 Ridge Road, Fawn Grove, PA 17321

Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

MCCESNEY, GARY W.

Late of Prosperity, Greene County, Pennsylvania

Executor: Kenneth W. McChesney, 2585 Clermont Street, Denver CO 80207

Attorney: Peter D. Lyle, Esquire, 81 Dutilh Road, Suite 200, Cranberry Township, PA 16066

MCKEE, GLORIA JEAN A/K/A GLORIA J. MCKEE

Late of Franklin Township, Greene County, Pennsylvania

Administratrix CTA: Shelly K. Donley, C/O Benjamin F. Goodwin, Esquire, GOODWIN | COMO, P.C., 108 N. Beeson Blvd., Suite 400, Uniontown, PA 15401

Attorney: Benjamin F. Goodwin, Esquire, GOODWIN | COMO, P.C., 108 N. Beeson Blvd., Suite 400, Uniontown, PA 15401

RAWLINS, JOHN E.

Late of Waynesburg, Greene County, Pennsylvania

Executor: Charles M. Rawlins, C/O Colin Adair Morgan, Esquire, Certified Elder Law Attorney and Julian Gray Associates, 954 Greentree Road, Pittsburgh, PA 15220

Attorney: Colin Adair Morga, Esquire, Certified Elder Law Attorney, Julian Gray Associates, 954 Greentree Road, Pittsburgh, PA 15220

THOMAS, CATHERINE M. A/K/A CATHERINE MARLENE THOMAS

Late of Cumberland Township, Greene County, Pennsylvania

Administratrix CTA: Ada C. Patterson, 402 Fords Hill Road, Grindstone, PA 15442

Attorney: Blake J. Birchmeier, Esquire, Pollock Morris Belletti & Simms, LLC, 54 South Washington Street, Waynesburg, PA 15370

TRUMKA, RICHARD LOUIS

Late of Wayne Township, Greene County, Pennsylvania

Personal Representative: Barbara Ann Trumka, C/O James T. Davis, Esquire, Davis & Davis Law Offices, 107 East Main Street, Uniontown, PA 15401

Attorney: James T. Davis, Esquire, Davis & Davis Law Offices, 107 East Main Street, Uniontown, PA 15401

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YELENIK, RUTH SARAH

Late of Monongahela Township, Greene County, Pennsylvania
Executor: Gerald Yelenik, 815 Woodford Drive, Greenville, SC 29615
Attorney: Gregory C. Hook, Esquire, 189 W. High Street, PO Box 792, Waynesburg,
PA 15370

TRUST NOTICE

Trust of: Donald W. Fuller Revocable Living Trust dated 08/22/2018
Late of: Cumberland Township, Greene County, Pennsylvania

All persons having claims against the same will present them for payment; duly authenticated; and those indebted hereto, will please make immediate payment to:

Thomas P. Fuller, 101 Alkim Drive, Brownsville, PA 15417

Or to:

Glenn A. Smith, Esquire, Elder Law Offices of Shields and Boris, 1150 Old Pond Road, Bridgeville, PA 15017

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA

CIVIL PROCEDURAL RULES COMMITTEE

MINOR COURT RULES COMMITTEE

ORPHANS' COURT PROCEDURAL RULES COMMITTEE

CRIMINAL PROCEDURAL RULES COMMITTEE

JUVENILE COURT PROCEDURAL RULES COMMITTEE

APPELLATE COURT PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.J.A. 1990; Amendment of Pa.R.Civ.P. 240; Adoption of Pa.R.Civ.P.M.D.J. 206.1 and Amendment of Pa.R.Civ.P.M.D.J. 206; Amendment of Pa.R.O.C.P. 1.40; Amendment of Pa.R.Crim.P. 460, 490, 490.1, 790, and 791; Adoption of Pa.R.J.C.P. 174 and 1174; and Adoption of Pa.R.A.P. 550 and 1614, Amendment of Pa.R.A.P. 551 – 554; and Recission of Pa.R.A.P. 555 – 561 with Correlative Amendment of Pa.R.Civ.P. 205.6, 229.2, 1018, 1041.1, 1308, 1313, 1920.62, 1940.5, 2028, and 4003.5; Pa.R.Civ.P.M.D.J. 1008 and 1013; Pa.R.Crim.P. 704, 708, 720,

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900, and 904; and Pa.R.A.P. 905, 907, 1612, 1701, 2151, 2185, 2186, 2187, 2189, 2521, 2701, and 3804 (omitted)

The Rules Committees are considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.J.A. 1990; amendment of Pa.R.Civ.P. 240; adoption of Pa.R.Civ.P.M.D.J. 206.1 and amendment of Pa.R.Civ.P.M.D.J. 206; amendment of Pa.R.O.C.P. 1.40; amendment of Pa.R.Crim.P. 460, 490, 490.1, 790, and 791; and Pa.R.J.C.P. 174 and 1174; and adoption of Pa.R.A.P. 550 and 1614, amendment of Pa.R.A.P. 551 – 554, and recission of Pa.R.A.P. 555-561 with correlative amendment of Pa.R.Civ.P. 205.6, 229.2, 1018, 1041.1, 1308, 1313, 1920.62, 1940.5, 2028, and 4003.5; Pa.R.Civ.P.M.D.J. 1008 and 1013; Pa.R.Crim.P. 704, 708, 720, 900, and 904; and Pa.R.A.P. 905, 907, 1612, 1701, 2151, 2185, 2186, 2187, 2189, 2521, 2701, and 3804 (omitted) governing the procedures, eligibility, and forms to seek and determine a waiver of fees and costs related to the initial filing fee and costs associated with a legal action, *i.e., in forma pauperis*, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being re-published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Rules Committees to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Rules Committees invite all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Rules Committees
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
rulescommittees@pacourts.us

All communications in reference to the proposal should be received by **June 30, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed

submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE
MINOR COURT RULES COMMITTEE
ORPHANS' COURT PROCEDURAL RULES COMMITTEE
CRIMINAL PROCEDURAL RULES COMMITTEE
JUVENILE COURT PROCEDURAL RULES COMMITTEE
APPELLATE COURT PROCEDURAL RULES COMMITTEE**

RE-PUBLICATION REPORT

A proposal is being considered for the adoption of Pennsylvania Rule of Judicial Administration 1990; the amendment of Pennsylvania Rule of Civil Procedure 240; the adoption of Pennsylvania Rule of Civil Procedure before Magisterial District Judges 206.1 and the amendment of Pennsylvania Rule of Civil Procedure before Magisterial District Judges 206; the amendment of Pennsylvania Rule of Orphans' Court Procedure 1.40; the amendment of Pennsylvania Rules of Criminal Procedure ⁴⁶⁰ 490, 490.1, 790, and 791; the adoption of Pennsylvania Rules of Juvenile Court Procedure 174 and 1174; and the adoption of Pennsylvania Rules of Appellate Procedure 550 and 1614, the amendment of Pennsylvania Rules of Appellate Procedure 551-554, and the rescission of Pennsylvania Rules of Appellate Procedure 555-561. The intent of this proposal is to establish one rule setting forth the procedures, eligibility, and forms to seek and determine a waiver of fees and costs related to the initial filing fee and costs associated with a legal action, *i.e.*, *in forma pauperis*.

Adoption of Pa.R.J.A. 1990.

Previously, the Civil Procedural Rules Committee published a proposal for the adoption of Pennsylvania Rule of Judicial Administration 1990 and amendment of Pennsylvania Rule of Civil Procedure 240. That proposal contained procedures, eligibility criteria, and forms governing requests to proceed *in forma pauperis* ("IFP"). See 50 Pa.B. 4023 (August 8, 2020). In total, 41 comments to publication were received.

What follows are consolidated and summarized suggestions from the comments, together with an explanation of how the proposal may have been revised in response to the suggestions:

- It was suggested that the scope of IFP waiver apply to all costs. The original proposal indicated that fee waivers would apply only to fees incurred in "commencing" an action, proceeding or appeal. The rule should make clear that any waiver applies to all costs potentially payable during the litigation to the court, filing office, or public officer or employee, or a contractor thereof.

In response, the scope of the rule contained within subdivision (a) has been revised to more closely align to that presently contained in Pa.R.Civ.P. 240(f).

- It was suggested that the rule continue to allow legal aid and pro bono attorneys to waive fees via *praecipe*. The current procedure allows a litigant who is represented by a legal aid/pro bono attorney to obtain IFP status by the attorney certifying that he or she is providing legal services for free and the litigant does not have the ability to pay.

In response, subdivision (b)(3) and (d)(6) operate to provide a waiver upon the representation of counsel by completing the *praecipe* form in subdivision (h).

- It was suggested that the rule ensure that IFP status remains after counsel withdraws. In cases where IFP status has been granted upon the application of counsel providing free legal services, IFP status should remain in effect even if counsel withdraws unless the court has reason to believe the person's financial circumstances have changed.

In response, the proposed rule does not address the continuation of IFP status after counsel has been permitted to withdraw. Presumably, any necessary steps to maintain IFP status would be addressed if counsel withdraws by motion, and substitute counsel enters an appearance, or the party is self-represented

- It was suggested that the information on the application be designated as confidential so as to prohibit the disclosure of the application and any supporting documents pursuant to the Case Records Public Access Policy of the Unified Judicial System.

In response, the Public Access Policy limits remote access to IFP “petitions” but those applications are presumably publicly accessible at a court facility. Please note that the requirement of supporting documentation to be attached to the application is proposed to be eliminated.

- It was suggested that the requirement of litigants who are categorically eligible also provide documentation of income, assets, and expenses be eliminated. Further, requiring corroborating documentation to be attached to the application is burdensome. Verification pursuant to 18 Pa.C.S. § 4904 under “penalty of perjury” should be sufficient.

In response, the requirement of corroborating documentation attached to the application at the time of filing has been eliminated because the application is verified by the party. However, subdivision (d)(6) is intended to permit the court to direct the party to provide supplemental information to substantiate the application.

- It was suggested that the hearing requirement be eliminated unless to deny an application or when a court deems a hearing is necessary. For those applicants who are not automatically eligible to proceed IFP, the proposed rule requires a hearing. A hearing is burdensome to applicants and should only be required when the court determines that it is necessary or prior to denying an application.

In response, subdivision (d)(3) only requires a record hearing as a condition of an application being denied. The record is necessary for any subsequent appellate review.

- It was suggested that the requirement to seek contributions from friends and family be eliminated. The subject matter of litigation is often personal and private. Parties seeking IFP status should not be forced to first ask friends and family to pay costs.

In response, the requirement that “other available financial resources, including resources from individuals who have a duty of support to the party” in subdivision (b)(2)(iv) be considered was not intended to identify other potential payors of fees and costs. Rather, the factor was intended to provide a more complete picture of the substantial financial hardship that payment of fees and costs would have on the party.

- It was suggested that the rule establish a standard for determining “substantial financial hardship” based upon case law, *i.e.*, individuals who cannot meet their basic life needs are entitled to proceed IFP. The standard should be adopted with the clear explanation that only the financial resources of the party are relevant to such a determination.

In response, the eligibility criterion in subdivision (b)(1) is intended to establish a standard for granting IFP status without further consideration of a party’s financial wherewithal. This criterion attempts to include individuals who cannot meet their basic life needs with reference to the federal poverty guidelines. For those individuals, any fee or cost cannot be paid and therefore should be waived.

Whereas “substantial financial hardship” is intended to include those persons whose gross income and assets exceed that in subdivision (b)(1) but imposition of a particular fee or cost, or culmination thereof, cannot be paid without causing a substantial financial hardship. That determination is fact-specific, and a standard may be incapable of precise definition in this context. Further, including “basic life needs” as a standard appeared as ambiguous as the phrase it was intended to explain.

- It was suggested that the rule require public notice of the IFP procedure. A provision should be added to require the rule and information about the application to be displayed in all court filing offices to let parties know about the option of proceeding proceed IFP.

In response, this suggestion is not without merit, but such a requirement appeared more administrative than procedural.

- It was suggested that the rule apply to all types of civil cases. For example, the rule should be expanded to apply to fees to probate a will.

In response, the Orphans’ Court Procedural Rules Committee is proposing rulemaking to incorporate by reference proposed Pa.R.J.A. 1990. *See also* Pa.R.O.C.P. 1.40. However, as described more fully below, applying proposed Pa.R.J.A. 1990 to filings with a register of wills is not possible due to the separate and independent nature of that office.

- It was suggested that payment plans be eliminated. As previously proposed, the rule applied to applicants who are granted a waiver due to “substantial financial hardship.” The rule permitted a partial waiver of costs and allowed the court to place such individuals on payment plans. The option will only increase the burden on impoverished individuals. It will create an administrative morass and the proposal lacks any explanation of how to determine the amount a person should pay each month, who will collect the money, and the penalties for nonpayment.

In response, the administrative burden of a payment plan does not appear justified given the amount that may be owed by a party. Therefore, aspects of a payment plan have been removed from the rule.

It should be noted that the use of “in part” with reference to a granted hardship waiver was intended to permit the court to order a proportional waiver of any individual fee or cost and impose a payment plan on the remainder, as well as permit a court to grant a waiver for some fees and costs, but not all fees and costs. Concerning the latter, the court may wish to limit the potential for abuse of a waiver. For example, a party may be granted a waiver for purposes of pursuing an appeal. The court may limit the waiver to filing fees for a notice of appeal and the costs of production of transcripts related to the issue on appeal. Such a limitation may be prudent in cases spanning years such as child custody matters so that a party does not abuse IFP status to obtain transcripts of every proceeding ever held under that docket number not relevant to the appeal.

The phrase of “in whole or in part” has been removed from the proposed rule. Instead, the scope of an ordered waiver is left to judicial discretion based upon specific facts and needs. Further comments about whether this aspect of judicial discretion should be codified in the rule text or referenced in the commentary are welcome.

- It was suggested that the requirement for a litigant proceeding IFP, who later obtains a money judgment, to repay the costs of litigation, be eliminated. Costs are ordinarily taxed against the losing party. This provision creates an exception to that principle for indigent persons only in that they, unlike wealthier individuals, must reimburse costs even if they win.

In response, subdivision (f)(2) and (f)(3) have been clarified that the party paying the judgment or settlement to an IFP party must pay the filing office the previously waived fees on behalf of the IFP party. Thus, the losing party, rather than the IFP party, must pay the waived fees when the IFP party prevails.

- It was suggested that the application form be simplified. The application form should be made shorter and more understandable for applicants who will most often be completing it without legal assistance. This includes simplifying the organization and sequencing of the questions, eliminating possible areas of confusions, and ensuring that the language will be clear to people at lower reading levels by consulting with a communications specialist and members of the public when finalizing the form.

In response, the application was simplified while still providing the court with the necessary information to decide the application.

- It was suggested that “*in forma pauperis*” be removed from the title of the rule. It is demeaning, archaic, and not likely to be understood by self-represented parties.

In response, the proposed title of the rule is: “Application to Waive Fees and Costs (*In Forma Pauperis*).” The Latin phrase is retained parenthetically to inform readers of the prior rule.

- It was suggested that IFP status be expanded to apply to the imposition of fines and fees in criminal and juvenile matters.

A response to this suggestion can be found under the Criminal Procedural Rules Committee’s remarks within this Publication Report.

In addition to the above revisions, the rule seeks to clarify that the IFP process is an *ex parte* matter. Subdivision (d)(3) and the Comment are intended to emphasize this aspect. The waiver application is intended to be an expedited administrative process between the applicant and the court, and not subject to the adversarial process. The revised rule also clarifies in subdivision (d) that an individual designated by the court is able to review applications to determine immediate eligibility. The “court,” as used in subdivision (d)(3) is not intended to preclude the use of hearing

officers to conduct the record hearings and making a recommendation to a judge concerning a denial.

Proposed Pa.R.J.A. 1990 does not incorporate the provision found in Pa.R.Civ.P. 240(j)(1) to dismiss the underlying action if the allegations in the application are untrue or if the underlying action is frivolous. The proposed rule is solely limited to the waiver application and decision. If the application is denied, then the party has 30 days to pay the filing fee otherwise the action will be terminated. The termination of the action is the result of an unpaid filing fee and not a sanction for the untruthfulness of statements made in the application. The consequence of violating 18 Pa.C.S. § 4909 is a criminal matter.

As for a dismissal based on the frivolity of the underlying matter, that authority has been previously codified at Pa.R.Civ.P. 240(j)(1). Yet, it is believed to be outside the scope of this general rule applicable to all bodies of procedural rules. Should a court dismiss an action on that basis, then the IFP application under Pa.R.J.A. 1990 would be moot.

IFP rules currently exist at Pa.R.Civ.P. 240, Pa.R.A.P. 551-561, Pa.R.Civ.P.M.D.J. 206, and Pa.R.O.C.P. 1.40 (incorporating by reference Pa.R.Civ.P. 240). This proposal retains one IFP rule setting forth the qualifications and procedures to determine IFP status that would be located in the Rules of Judicial Administration. In doing so, all bodies of rules can reference and utilize the new IFP rule. This was believed to be a more unified approach than promulgating an IFP rule in each body of procedural rules.

With a centrally located IFP rule, Pa.R.Civ.P. 240, Pa.R.A.P. 551-561, and Pa.R.Civ.P.M.D.J. 206 are proposed to be amended to remove duplicative or inconsistent provisions. Those rules, together with Pa.R.O.C.P. 1.40, would refer to the new IFP rule located in the Rules of Judicial Administration. Further, the existing bodies of rules would need to either retain or develop supplemental provisions specific to each body of rules, if necessary.

During the comment review process, it was recommended that each Rules Committee consider necessary rulemaking to implement the IFP proposal and publish any rule proposals together with the IFP proposal so readers can understand how they interact. The Criminal Procedural Rules Committee and the Juvenile Court Procedural Rules Committee both expressed an interest in adopting the IFP rule for limited purposes:

What follows is a description of further proposals involving the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Civil Procedure before Magisterial District Judges, the Pennsylvania Rules of Orphans’ Court Procedure, the Pennsylvania Rules of Criminal Procedure, the Pennsylvania Rules of Juvenile Court Procedure, and the Pennsylvania Rules of Appellate Procedure.

Amendment of Pa.R.Civ.P. 240.

Current Pa.R.Civ.P. 240 sets forth the procedure to request to proceed IFP based upon an inability to pay court costs. It requires a self-represented litigant to file a petition requesting such status along with an affidavit in support of the petition either simultaneously with the commencement of an action or afterward. The affidavit requests financial information regarding the litigant’s household, including income, assets, and liabilities. Pa.R.Civ.P. 240 also permits a litigant represented by an attorney to proceed IFP. In contrast to the self-represented litigant, however, the litigant represented by an attorney may proceed IFP upon the attorney’s filing of a *praecipe* containing a certification that the attorney is providing free legal advice to the party and the party is believed to be unable to pay the costs of litigation. Pa.R.Civ.P. 240 does not contain any objective criteria for the judge to make a determination as to whether a petitioner qualifies to proceed IFP. Additional provisions in subdivision (j) permit the court to dismiss a civil action for frivolousness or when a civil action is commenced by a writ of summons and the petitioner fails to file a complaint within 90 days of the filing of the motion for fees and costs.

Given the footprint of proposed Pa.R.J.A. 1990, which contains procedures, eligibility criteria, and forms, the current rule, together with any explanatory comments on prior rulemaking, the current rule would be largely displaced. In its place, an amended Pa.R.Civ.P. 240 would refer a reader to Pa.R.J.A. 1990. The proposed amendment would, however, retain the procedures in current subdivision (j) because they apply solely to civil actions and have not been incorporated into proposed Pa.R.J.A. 1990.

Amendment of Pa.R.Civ.P.M.D.J. 206 and Adoption of Pa.R.Civ.P.M.D.J. 206.1.

The Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges presently contain provisions governing the process for obtaining IFP status, including a form petition. See Pa.R.Civ.P.M.D.J. 206E. Proposed new Pa.R.J.A. 1990,

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which contains procedures, eligibility criteria, and forms, would render existing Rule 206E irrelevant. The Committee proposes removing the IFP provisions, *i.e.*, subdivision E, from Rule 206 and proposes a new Rule 206.1 to establish a cross-reference to proposed new Pa.R.J.A. 1990. The Committee believes it advantageous to move the cross-reference to proposed new Pa.R.J.A. 1990 to a new standalone rule rather than continuing to have it appear as one of five subdivisions in Rule 206 relating to payment and recovery of costs.

Cross-references to the *in forma pauperis* petition in Rules 1008 and 1013 and the “Supplemental Instructions for Obtaining a Stay of Execution,” referenced in those Rules, will be updated to reflect Pa.R.J.A. 1990 and submitted to the Court as part of any recommendation.

Amendment of Pa.R.O.C.P. 1.40.

Currently, Pa.R.O.C.P. 1.40 cross-references Pa.R.Civ.P. 240, permitting a party to seek and receive a waiver of the costs of filing a legal paper or other costs of an action before the court when it is determined they are without the financial resources to do so. The Orphans’ Court Procedural Rules Committee proposes amending Pa.R.O.C.P. 1.40 to delete the cross-reference to Pa.R.Civ.P. 240 and instead point to Pa.R.J.A. 1990.

As reflected in the current Comment to Rule 1.40, the Rule does not apply to matters before a Register of Wills, including fees for probating a will. The Register is a separate and independent county officer and matters filed there are subject to a separate fee schedule. *See* 42 Pa.C.S. § 21017 (register fees in first class counties), § 21022.1 (register fees in second through eighth class counties), and § 21021 (register fees in fifth through eighth class counties).

Amendment of Pa.R.Crim.P. 460, 490, 490.1, 790, and 791.

The Criminal Procedural Rules Committee is proposing amendment of Pa.R.Crim.P. 460, 490, 490.1, 790, and 791 and their Comments to permit a defendant to seek the waiver of any filing fees associated with a petition for expungement or a petition for order for limited access or when filing a notice of appeal from a summary conviction. Such waiver would be sought pursuant to Pa.R.J.A. 1990. The proposed amendments would not, however, provide for the waiver of any fees, costs, or fines imposed as part of a sentence. As the Comment to Pa.R.J.A. 1990 states, “This rule is intended to establish criteria and procedures for the application and *praecipe*, and their determination, seeking a waiver of fees and costs for indigent parties that

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would otherwise operate to *limit access* to the courts.” Pa.R.J.A. 1990, Comment (emphasis added). The Comments to Rules 460, 490, 490.1, 790, and 791 would also be amended as part of this proposal to provide further guidance on the procedures for filing for a waiver pursuant to Pa.R.J.A. 1990.

Although much concern has been expressed to the Committee regarding the impact of unpaid fees, costs, and fines on the indigent, the Committee felt that rulemaking addressing the waiver of these financial obligations was not only beyond the scope of Pa.R.J.A. 1990 but inadvisable during the pendency of *Commonwealth v. Lopez*, 27 EAP 2021 (argued March 9, 2022). The Court granted allocatur in *Lopez* to consider whether Pa.R.Crim.P. 706(C) “requires a trial court to consider a defendant’s ability to pay prior to imposing mandatory court costs at sentencing.” *Commonwealth v. Lopez*, 261 A.3d 1031 (Table) (Pa. 2021); *see Commonwealth v. Lopez*, 248 A.3d 589 (Pa. Super. 2021) (“[T]he trial court did not err by imposing mandatory court costs upon Appellant without first holding an ability-to-pay hearing.”). Thus, the Committee concluded that any discussion of a proposal venturing to alleviate an indigent defendant of his or her financial obligations incurred as part of a sentence should await the Court’s decision in *Lopez*.

Adoption of Pa.R.J.C.P. 174 and 1174.

The Juvenile Court Procedural Rules Committee proposes Rule of Juvenile Court Procedure 174 to incorporate by reference the Pa.R.J.A. 1990 for the limited purpose of waiving expungement filing fees. This proposal is not intended to apply to financial obligations imposed as part of a disposition. *See also* 51 Pa.B. 6905 (November 6, 2021) (rulemaking on that topic). The proposed rule would be located in the group of rules governing expungement procedures.

The Committee discussed whether there were any fees charged in dependency proceedings. Anecdotally, members shared that some counties do imposed fees, which were separate from those imposed for orphans’ court proceedings. Data was collected from the Common Pleas Case Management System indicating fees being imposed in various cases in various counties. The data suggested that, while the permissibility, appropriateness, and consistency of imposing fees in dependency cases can be debated, a similar dependency rule incorporating Pa.R.J.A. 1990 would provide a party the ability to seek a waiver from those fees. Accordingly, the Committee proposes Rule of Juvenile Court Procedure 1174.

Adoption of Pa.R.A.P. 550 and ¹⁶14, Amendment of Pa.R.A.P. 551 – 554 and Recission of Pa.R.A.P. 555 – 561.

Currently, the Rules of Appellate Procedure contain standalone rules governing the IFP procedure, including a form. See Pa.R.A.P. 551-561. Given the footprint of the proposed new Pa.R.J.A. 1990, which contains procedures, eligibility criteria, and forms, the current Rules of Appellate Procedure on this topic would be largely displaced. However, there remains a need for Rules of Appellate Procedure to continue a previously granted waiver of fees and costs in the appellate court and to address circumstances when IFP status is first sought from the appellate court.

Pa.R.A.P. 551(a) generally provides for the continuation of a waiver and subdivision (b) permits the appellate court to request a verified statement to be filed when the record may be delayed or the record is incomplete. Pa.R.A.P. 552(a) requires a party who was not previously granted a waiver to file an application or *praecipe* at the same time as the underlying action is being commenced in the appellate court. These simplified procedures are intended to complement the simplified procedures reflected in revised Pa.R.J.A. 1990.

Pa.R.J.A. 1990(d)(3) requires a record hearing if a waiver application is not granted. This hearing requirement cannot be accommodated in the Superior Court and Supreme Court because those courts are not able to conduct a record hearing. As such, in Pa.R.A.P. 552(b), the Committee proposes that any applications filed in the appellate courts that are not administratively approved may be remanded to the trial court to hold a record hearing. It is noted that Pa.R.A.P. 1701(b)(1) already specifically authorizes the trial court to rule on an application after an appeal has been taken.

Pa.R.A.P. 554 directs that appellate review of denied applications in a court of record proceed in accordance with Chapter 16 as a petition for specialized review. The phrase, “court of record” was used to clarify that review of a denied application in a magisterial district court is not subject to this rule because that court is not considered a “court of record.”

Within Chapter 16, Pa.R.A.P. 1614 is proposed to specifically address review of orders denying a waiver of fees and costs. This rule is intended to aid self-represented parties navigating the appellate process and provide appellate review pursuant to *Grant v. Blaine*, 868 A.2d 400 (Pa. 2005). In subdivision (a), a 10-day window is provided due to the straightforward nature of the

subject matter and the desire to streamline the proceedings. Any further review would be subject to Pa.R.A.P. 1606.

* * *

It is noted that references to “*in forma pauperis*” and citations to existing rules on that subject will require corollary amendments to reflect the changes contained in this proposal, see, e.g., Pa.R.Civ.P. 1920.62. Those corollary amendments have been omitted from this proposal so that the reader is able to discern the substantive aspects of the proposal more readily. All comments, concerns, and suggestions regarding this proposal are welcome.

Pennsylvania Rules of Judicial Administration

(This is an entirely new rule.)

Rule 1990. Application to Waive Fees and Costs (*In Forma Pauperis*)

- (a) **Scope.** To the extent authorized by procedural rule, this rule shall govern the procedure for waiving the initial filing fee and such other fees and costs associated with a legal action:
- (1) imposed or authorized by an Act of Assembly or general rule, and are payable to a court, filing office, or public officer or employee; or
 - (2) required for the posting of a bond or other security for costs as a condition for commencing a legal action.
- (b) **Eligibility.**
- (1) **Without Financial Resources.** A party seeking a waiver shall complete and submit an application so the court can determine whether the party is without financial resources to pay the fees and costs associated with the legal action. A party shall be deemed without financial resources if the party:
 - (i) Receives needs-based public assistance (including, but not limited to, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), or Temporary Assistance to Needy Families (TANF)); or

- (ii) Meets the following income and asset requirement:
 - (I) gross income (*i.e.*, before taxes and other deductions) that is 200% or less than the federal poverty guidelines for the party’s household size; and
 - (II) assets less than \$10,000, excluding the party’s home and one vehicle.
- (2) **Substantial Financial Hardship.** A party seeking a waiver shall complete and submit an application so the court can determine whether the party will suffer a substantial financial hardship by paying the fees and costs associated with the legal action based upon:
 - (i) the party’s gross income, assets, and expenses;
 - (ii) the number of minor children or adult children, who are incapable of self-support due to a physical or mental disability, that the party is supporting, including a child support obligation;
 - (iii) employment history;
 - (iv) other available financial resources, including resources from individuals who have a duty of support to the party; and
 - (v) other factors affecting the party’s income, assets, or expenses.
- (3) **Representation of Counsel.** A party represented by counsel practicing in a legal aid organization or providing the party with free legal services shall receive a waiver upon *praecipe* of counsel stating that counsel reasonably believes the party is unable to pay the fees and costs associated with the legal action.
- (c) **Timing.**
 - (1) The application or *praecipe* shall be filed at the same time as the legal action, not before.
 - (2) The filing office shall docket the legal action and the application or *praecipe* without the party paying the filing fee.
 - (3) If the court denies the application, the party shall pay the filing fee for commencing the action within 30 days of notification of the

- denial. The party may not proceed in the action, so long as the fee remains unpaid, except that the party may appeal the denial or obtain permission from the court to proceed.
- (5) If a party commences an action and later files an application or *praecipe* to waive fees and costs, the filing office shall not refund the fees and costs previously paid.
- (d) **Court Action.** The court or an individual designated by the court shall review all applications to determine immediate eligibility. The court should enter its order determining the application within 20 days of its filing date.
 - (1) If a party is deemed eligible for a waiver, the court shall grant the application without a hearing.
 - (2) If the court cannot determine eligibility solely on the application, then the court may direct the party to provide supplemental information to complete or substantiate the application.
 - (3) The court may deny an application to waive fees and costs only after an *ex parte* record hearing and if the court finds that:
 - (i) the party did not provide sufficient supplemental information to complete the application;
 - (ii) the party did not provide sufficient supplemental information to substantiate the application;
 - (iii) the party included materially inaccurate information in the application or supplemental information; or
 - (iv) the party will not suffer a substantial financial hardship from paying the fees and costs associated with the legal action.
 - (4) The court may vacate its order granting an application if the court finds that the application or supplemental information was materially inaccurate or the party is able to pay the fees and costs.
 - (5) If the court denies an application or rescinds an order previously granting an application, the court shall state in its order:
 - (i) the reason for denying the application or rescinding a previously granted application; and
 - (ii) advise that the party has 30 days to pay the filing fees or the action will be terminated without further notice.

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(6) Upon *praecipe* of counsel pursuant to subdivision (b)(3), a party shall be deemed to have received a waiver without further action of the court.

(e) **Notice. Termination. Reinstatement.**

- (1) The filing office shall serve the court’s order upon the party.
- (2) If at least 30 days have passed after the filing office has served an order denying the application and the fee remains unpaid, the filing office shall enter an appropriate order terminating the legal action.
- (3) The court may reinstate the legal action for good cause shown.

(f) **Recovery of Fees and Costs.**

- (1) A party receiving a waiver of fees and costs has a continuing obligation to inform the court of an improvement in the party’s financial circumstances that would enable the party to pay any waived fees and costs.
- (2) If the party receiving a waiver obtains a money judgment or settlement, the party paying the judgment or settlement shall pay the previously waived fees and costs to the filing office as part of the litigation’s taxed costs.
- (3) Under no circumstances shall taxed costs for the waived fees and costs be paid to the party who has received a waiver.

(g) **Application Form.** The application required by subdivision (b) shall be substantially in the following form:

(Caption)

APPLICATION TO WAIVE FEES AND COSTS

Party Name: _____
First
Middle
Last

Residence: _____

City, State, Zip: _____

Check the box if you are currently without a house or apartment.

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Do you currently receive one or more of the following public benefits?

- Supplemental Nutrition Assistance Program (SNAP) (food stamps)
- Medicaid
- Supplemental Security Income (SSI) (Not Social Security)
- Temporary Assistance to Needy Families (TANF)
- Public Housing or Section 8 Housing
- Needs-based VA Pension
- Low-Income Energy Assistance
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Other need-based federal, state, or local program: *What program?* _____

Yes No

If you answered “Yes,” skip this next section and sign/date the VERIFICATION

I am providing the following information about people who live with me:

I support _____ adults (not counting myself) who live with me.

I support _____ children under 18 who live with me.

GROSS MONTHLY INCOME (income before paying taxes and other deductions):

\$ _____ monthly gross wages. I work as a _____ (*job title/description*) for _____ (*name of employer*).

\$ _____ unemployment compensation. I have been unemployed since _____ (*date*). My last employer was _____ (*name of employer*).

\$ _____ money received from other people.

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\$ _____ Retirement/Pension Disability
 Workers Comp Social Security
 Child/Spousal support Other sources:
(describe sources)

\$ _____ Total monthly gross income

ASSETS:

\$ _____ Cash

\$ _____ Bank accounts or other financial assets

\$ _____ Cars or other vehicles

\$ _____ House

\$ _____ Other property: _____ *(describe)*

\$ _____ Total value of property

MONTHLY EXPENSES:

\$ _____ Rent/mortgage payment

\$ _____ Food and household supplies

\$ _____ Utilities, including cell phone

\$ _____ Clothing and other personal expenses

\$ _____ Medical and dental expenses/insurance

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\$ _____ Child care

\$ _____ Transportation, including car payments and repairs

\$ _____ Child and spousal support or alimony

\$ _____ Other expenses: *(describe)* _____

\$ _____ Total monthly expenses

Are there other facts that you would like the court to know about your circumstances that may help the court decide whether to grant your application, such as you are experiencing homelessness or you have health issues?

VERIFICATION

I understand that I have a continuing obligation to inform the court of an improvement in my financial circumstances that would permit me to pay the fees and costs in this case. If I fail to inform the court of any changes in my circumstances, I understand that the court may rescind the waiver of fees and costs and order me to pay those fees and costs.

I verify that the statements made in this application are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

 Date

 Party's Signature

(h) **Praeceptum Form.** The *praecipue* required by subdivision (b)(3) shall be substantially in the following form:

(Caption)

PRAECIPE TO WAIVE FEES AND COSTS

Kindly allow _____ to proceed without paying fees and costs.

I, _____, am the attorney for the party requesting a waiver of fees and costs, providing free legal services to the party, and reasonably believe the party is unable to pay the fees and costs.

Attorney for _____

Comment: This rule is intended to establish criteria and procedures for the application and *praecipue*, and their determination, seeking a waiver of fees and costs for indigent parties that would otherwise operate to limit access to the courts. See Pa. Const. art. I, § 11. The type of legal action, fees, and costs to which this rule applies is determined by procedural rule.

The judicial determination of an application is *ex parte*, see subdivision (d)(3). As such, the party is not required to serve the application on any other party. Nothing in this rule is intended to provide standing to any other party to participate in the determination of an application. Notwithstanding, the application and order are publicly accessible at the filing office pursuant to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

Counsel filing a *praecipue*, as permitted by subdivision (b)(3), has a continuing obligation under subdivision (f)(1) to advise the court of any material improvement in the party’s financial circumstances that would enable the party to pay any waived fees and costs, unless permitted to withdrawal.

An order denying an application that puts a party “out of court” is a final, appealable order. See *Grant v. Blaine*, 868 A.2d 400 (Pa. 2005).

Rule 240. [In Forma Pauperis.] Application to Waive Fees and Costs.

(a) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act and Protection of Victims of Sexual Violence or Intimidation Act.

Note: The term “all civil actions and proceedings” includes all domestic relations actions except those brought pursuant to the Protection From Abuse Act, 23 Pa.C.S. § 6106, and Protection of Victims of Sexual Violence or Intimidation Act, 42 Pa.C.S. §§ 62A01—62A60.

(b) A party who is without financial resources to pay the costs of litigation is entitled to proceed *in forma pauperis*.

(c) Except as provided by subdivision (d), the party shall file a petition and an affidavit in the form prescribed by subdivision (h). The petition may not be filed prior to the commencement of an action or proceeding or the taking of an appeal.

(1)(i) If the petition is filed simultaneously with the commencement of the action or proceeding or with the taking of the appeal, the prothonotary shall docket the matter and petition without the payment of any filing fee.

(ii) If the court shall thereafter deny the petition, the petitioner shall pay the filing fee for commencing the action or proceeding or taking the appeal. A party required to pay such fee may not without leave of court take any further steps in the action, proceeding or appeal so long as such fee remains unpaid. Not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter a judgment of *non pros* in the action or proceeding or strike the appeal if the fee remains unpaid. The action, proceeding or appeal shall be reinstated only by the court for good cause shown.

(2) If the action or proceeding is commenced or the appeal is taken without the simultaneous filing of a petition, the appropriate filing fee must be paid and shall not be refunded if a petition is thereafter filed and granted.

(3) Except as provided by subdivision (j)(2), the court shall act promptly upon the petition and shall enter its order within twenty days from the date of the filing of the petition. If the petition is denied, in whole or in part, the court shall briefly state its reasons.

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed *in forma pauperis* upon the filing of a *praecipue* which contains a

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certification by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs.

(2) The *praecipe* shall be substantially in the form prescribed by subdivision (i).

(e) A party permitted to proceed *in forma pauperis* has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

(f) A party permitted to proceed *in forma pauperis* shall not be required to (1) pay any cost or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee, or

(2) post bond or other security for costs as a condition for commencing an action or proceeding or taking an appeal.

(g) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed *in forma pauperis*, the exonerated fees and costs shall be taxed as costs and paid to the prothonotary by the party paying the monetary recovery. In no event shall the exonerated fees and costs be paid to the indigent party.

(h) The affidavit in support of a petition for leave to proceed *in forma pauperis* shall be substantially in the following form:

(Caption)

1. I am the (plaintiff) (defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: _____

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Address: _____

(b) *Employment*

If you are presently employed, state

Employer _____

Address: _____

Salary or wages per month: _____

Type of work: _____

If you are presently unemployed, state

Date of last employment: _____

Salary or wages per month: _____

Type of work: _____

(c) *Other income within the past twelve months*

Business or profession: _____

Other self-employment: _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social security benefits: _____

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Support payments: _____

Disability payments: _____

Unemployment compensation and supplemental benefits: _____

Workers' compensation: _____

Public assistance: _____

Other: _____

(d) *Other contributions to household support*

(Wife) (Husband) Name: _____

If your (wife) (husband) is employed, state

Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: _____

Contributions from parents: _____

Other contributions: _____

(e) *Property owned*

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Cash: _____

Checking account: _____

Savings account: _____

Certificates of deposit: _____

Real estate (including home): _____

Motor vehicle: Make _____, Year _____,

Cost _____, Amount Owed \$ _____

Stocks and bonds: _____

Other: _____

(f) *Debts and Obligations*

Mortgage: _____

Rent: _____

Loans: _____

Other: _____

(g) *Persons dependent upon you for support*

(Wife) (Husband) Name: _____

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Children, if any:

Name: _____ Age: _____

Other Persons:

Name: _____

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____

Petitioner

(i) The praecipe required by subdivision (d) shall be substantially in the following form:

(Caption)

PRAECIPE TO PROCEED IN FORMA PAUPERIS

To the Prothonotary:

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Kindly allow _____, (Plaintiff) (Defendant) to proceed in forma pauperis.

I, _____, attorney for the party proceeding in forma pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal service to the party.

Attorney for

(j)(1) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Note: A frivolous action or proceeding has been defined as one that “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

(2) If the petitioner commences the action by writ of summons, the court shall not act on the petition for leave to proceed in forma pauperis until the complaint is filed. If the complaint has not been filed within ninety days of the filing of the petition, the court may dismiss the action pursuant to subdivision (j)(1).

Note: The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 205.6.]

[EXPLANATORY COMMENT—1991

The Judiciary Act Repealer Act (JARA) became law in 1978, repealing literally thousands of statutory provisions governing civil practice and procedure and amending

many others. The Rules of Civil Procedure contained many references to these repealed and amended statutes.

The recent Order of the Supreme Court deletes several notes which are obsolete either because they refer to statutes which have been repealed or amended or because they are no longer of benefit to the bench and bar. Other notes have been amended to refer to current statutory provisions or other rules.

The following rules have been amended:

* * *

... There are two housekeeping amendments. Rule 240 governing proceedings in forma pauperis has been amended by deleting the opening phrase of subdivision (c)(3). The language was surplusage and had no relevance to the subdivision.

Second, Rule 1041.1(b) governing asbestos litigation was amended by deleting the second paragraph. The second paragraph repeated the text of Rule of Judicial Administration 1902 verbatim and was unnecessary here. No change in practice results from the deletion of the second paragraph.

The amendments are of a technical nature only and do not result in any change in practice or procedure.

New subdivision (i) of Pennsylvania Rule of Civil Procedure 240 governing proceedings in forma pauperis enables the courts of common pleas to eliminate frivolous in forma pauperis lawsuits. The effect of such lawsuits on the judicial system was stated by the Supreme Court of the United States in *Neitzke v. Williams*, 490 U.S. 319, 326, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338, 347 (1990):

We recognize the problems in judicial administration caused by the surfeit of meritless in forma pauperis complaints in the federal courts, not the least of which is the possibility that meritorious complaints will

receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints.

New Rule 240(i) would allow the court to dismiss an action in which a petition for leave to proceed in forma pauperis has been filed and either “the allegation of poverty is untrue” or “the court is satisfied that the action, proceeding or appeal is frivolous.” The court may dismiss a suit under this rule only where the petition for in forma pauperis status is filed simultaneously with the commencement of the suit and the court has taken no action on the petition. Once the petition has been granted and the petitioner has taken steps to prosecute the suit, the traditional remedies of preliminary objections, judgment on the pleadings and summary judgment are available to the defending party.

The subject of the rule is the “frivolous” lawsuit. A note has been added to the rule calling attention to a definition of that term by the Supreme Court of the United States. That definition is virtually identical in its statement with the definition of the Supreme Court of Pennsylvania in *Robinson v. Com., Pa. Board of Probation and Parole*, 525 Pa. 505, 512, 582 A.2d 857, 860 (1990) defining the term “frivolous” as used in Pennsylvania Rule of Appellate Procedure 2744 as “an appeal which lacks any basis in law or fact.”]

[EXPLANATORY COMMENT—1994

It had been suggested that there was a problem in clearing the docket when, upon commencing an action or taking an appeal from the judgment of a district justice, the party commencing the action or taking the appeal petitioned the court for leave to proceed in forma pauperis but the petition was denied and the required fee was never paid. Rule 240(c)(1) has been amended to correct the problem.

Subdivision (c)(1) governs the filing of a petition “simultaneously with the commencement of the action or with the taking of the appeal”. Initially, the prothonotary must docket the petition and the action or appeal without the payment of a filing fee. The previous rule simply provided that if the petition is denied, the petitioner must pay the required filing fee and cannot without leave of court take any further step in the action as long as the fee is not paid. The rule did not specify a time within which the fee must be paid

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or provide a remedy to the prothonotary for an action or appeal stalled by the nonpayment of the filing fee.

Revised Rule 240(c)(1) has been divided into two subparagraphs. Subparagraph (i) consists of the first sentence of previous Rule 240(c)(1) without change and requires the prothonotary to docket the petition and the action or appeal without the payment of a filing fee. Subparagraph (ii) consists of the remaining two sentences of previous Rule 240(c)(1) without change and two new sentences:

(ii) If the court shall thereafter deny the petition, the petitioner shall pay the filing fee for commencing the action or taking the appeal. A party required to pay such fee may not without leave of court take any further steps in the action or appeal so long as such fee remains unpaid. Not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter a judgment of non pros in the action or strike the appeal if the fee remains unpaid. The action or appeal shall be reinstated only by the court for good cause shown.

The new language permits the prothonotary to clear the docket for the non payment of the filing fee no sooner than ten days after denial of the petition to proceed *in forma pauperis*. By allowing the prothonotary to proceed, the rule encourages the petitioner to pay the required fee promptly, i.e., within ten days. Two points are to be noted. First, the amended rule does not require the prothonotary to act immediately upon the expiration of the ten day period. The prothonotary is merely directed to act no sooner than ten days after denial of the petition. Second, the prothonotary is directed to enter a judgment of non pros or to strike the appeal only “if the fee remains unpaid.” Consequently, once the fee has been paid the prothonotary may not take any action even though the ten day period has expired.]

[EXPLANATORY COMMENT—2001

Prior to the present amendment, Rule 240(d) provided for a party represented by an attorney to proceed in forma pauperis upon the filing of a praecipe. The rule prescribed two requirements for the praecipe. First, the praecipe must have contained “a certification

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by the attorney that he or she is providing free legal service to the party and believes the party is unable to pay the costs”. Second, the praecipe must have been “accompanied by the affidavit required by subdivision (c)” which is filed in support of a petition for leave to proceed in forma pauperis and which demonstrates the party's inability to pay the costs of litigation.

Subdivision (d) has been amended by deleting the requirement that the affidavit accompany the praecipe. As amended, the rule provides for the prothonotary to allow a party to proceed in forma pauperis solely upon a praecipe containing the certification of the party's attorney. A conforming amendment to the form of the praecipe in subdivision (i) deletes the reference to the accompanying affidavit. These amendments bring the rule into conformity with Rule 552(d) of the Pennsylvania Rules of Appellate Procedure and Rule 206 E. (iii) of the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before District Justices.]

[EXPLANATORY COMMENT—2009

There has been an increase in the concern about the use of social security numbers in court paper records. Consequently, the Supreme Court of Pennsylvania has amended Rule 240(h) governing the form for the petition to proceed *in forma pauperis* by deleting the requirement for a petitioner to supply his or her social security number.]

[EXPLANATORY COMMENT—2012

Present subdivision (j) provides for a court, prior to acting on a petition to proceed in forma pauperis, to dismiss an action, proceeding, or appeal if the allegation of poverty in the petition is untrue, or if the court is satisfied that the action, proceeding, or appeal is frivolous. However, subdivision (j) did not consider the situation where an action is commenced by the issuance of a writ of summons. The amendment to subdivision (j) requires the party commencing an action by writ of summons and seeking to proceed in forma pauperis to file the complaint within ninety days of filing the petition. The court would not make a determination on the petition until the complaint is filed. If the complaint is not filed within the ninety-day time period, the court may dismiss the action pursuant to procedures set forth in subdivision (j)(1).]

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy: Case Records of the Appellate and Trial Courts* (Policy), which will become effective January 6, 2018. To provide guidance to practitioners regarding the Policy, new Rule 205.6 has been adopted and provides that absent any applicable authority that constrains public access, all civil filings must comply with the Policy. Of particular importance are the requirements of Sections 7.0 and 8.0 of the Policy governing confidential information and confidential documents. In addition, the rule provides that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy.

Conforming amendments have been made to Rule 229.2 governing the petition to transfer structured settlement payment rights, Rule 240 governing the petition to proceed *in forma pauperis*, Rule 1018 governing captions, and Rule 2028 governing the naming and caption of minor children's names in actions by and against a minor. Section 7.0(A)(5) of the Policy prohibits the disclosure of the names of minor children in a filing unless the minor is charged as a defendant in a criminal matter. Both Rule 229.2 and Rule 240 require the filing of an affidavit in support of the petition. The form affidavit currently requires the disclosure of the full names of any minor children of the petitioner. See Rule 229.2(f) and 240(h). The amendment requires a petitioner to provide the initials only of any minor children. For Rule 2028, the amended rule requires that minor's initials only be provided in the caption. A cross-reference to Rule 2028 has been added to the note to Rule 1018. In addition, a note cross-referencing new Rule 205.6 has been added to Rules 229.2, 240, and 2028. Stylistic amendments to Rule 240 have also been made.]

(This is entirely new text.)

- (a) **General Rule.** Except as provided in subdivision (b), the procedure for requesting waiver of fees and costs in all civil actions is set forth in Pennsylvania Rule of Judicial Administration 1990.
- (b) **Commencing Action by Writ of Summons.** If a party commences a civil action by a writ of summons and the party seeks a waiver of fees and costs:

- (1) The court shall not act on the application to waive fees and costs until the party files a complaint.
- (2) If the party has not filed a complaint within 90 days of the application's filing date, the court may deny the application.
- (c) **Dismissal for Frivolous Action.** Nothing in Pa.R.J.A. 1990 shall preclude the court from *sua sponte* dismissing an underlying action, which is filed contemporaneously with an application to waive fees and costs, as frivolous.

Comment: The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Pa.R.Civ.P. 205.6.

Subdivision (b) addresses additional requirements when a party commences a civil action via the issuance of a writ of summons and seeks waiver of fees and costs. Within 90 days of filing the application, the party must file the complaint. Once the complaint is filed, the court may act on the application. If a party fails to file timely the complaint, the action may be dismissed.

Subdivision (c) enables the courts of common pleas to eliminate frivolous lawsuits involving a party who is requesting a waiver of fees and costs. The effect of such lawsuits on the judicial system was stated by the Supreme Court of the United States in *Neitzke v. Williams*, 490 U.S. 319 (1989):

We recognize the problems in judicial administration caused by the surfeit of meritless *in forma pauperis* complaints in the federal courts, not the least of which is the possibility that meritorious complaints will receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints.

Id. at 326. This definition is virtually identical in its statement with the definition of the Supreme Court of Pennsylvania in *Robinson v. Com., Pa. Board of Probation and Parole*, 582 A.2d 857, 860 (1990) defining the term “frivolous” as used in Pa.R.A.P. 2744 as “an appeal which lacks any basis in law or fact.”

Rule 206. Costs[; Proceedings *In Forma Pauperis*].

- [A.](a) Except as otherwise provided by law, the costs for filing and service of the complaint shall be paid at the time of filing.
- [B.](b) Except as otherwise provided by **[paragraph C] subdivision (c)** of this rule, the prevailing party in magisterial district court proceedings shall be entitled to recover taxable costs from the unsuccessful party. Such costs shall consist of all filing, personal service, witness, and execution costs authorized by Act of Assembly or general rule and paid by the prevailing party.
- [C.](c) Taxable costs on appeal or *certiorari* shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he or she does not obtain on appeal a judgment more favorable than that obtained in the magisterial district court proceeding. A defendant who prevails on *certiorari* proceedings brought by the defendant or who obtains a favorable judgment upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding magisterial district court proceeding and may recover taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the magisterial district court proceeding may recover taxable costs in that proceeding from the defendant if the plaintiff is successful on appeal, and in that event the defendant may not recover costs in the magisterial district court proceeding from the plaintiff.
- [D.](d) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act or 42 Pa.C.S. §§ 62A01-62A20.

[Note] **Comment:** “Execution” costs include those for executing an order for possession. The items constituting taxable costs in appeal or *certiorari* proceedings will be governed by law or general rule applicable in the court of common pleas.

Under **[paragraph B] subdivision (b)**, “personal service ... costs” refers only to personal service since mail costs are to be borne by the plaintiff in all cases in accordance with **[Section 1725.1 of the Judicial Code,]** 42 Pa.C.S. § 1725.1.

[This rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed *in forma pauperis* and who remains indigent. See *Brady v. Ford*, 679 A.2d 837(Pa. Super. 1996).]

For special provisions governing actions pursuant to the Protection From Abuse Act, *see* **[Sections 6106(b) and (c) of the Domestic Relations Code,]** 23 Pa.C.S. §§ 6106(b) and (c). For special provisions governing actions seeking relief for victims of sexual violence or intimidation, *see* 42 Pa.C.S. §§ 62A01-62A20.

[E. Proceedings *in forma pauperis*

- (1) A party who is without financial resources to pay the costs of litigation shall be entitled to proceed *in forma pauperis*.**
- (2) Except as provided by subparagraph (3), the party shall file a petition and affidavit in the form prescribed by subparagraph (6). The petition may not be filed prior to the commencement of the action, which action shall be accepted in the first instance, without the payment of filing costs.**
Except as prescribed by subparagraph (3), the magisterial district judge shall act promptly upon the petition and shall enter a determination within five days from the date of the filing of the petition. If the petition is denied, in whole or in part, the magisterial district judge shall briefly state the reasons therefor. The unsuccessful petitioner may proceed no further so long as such costs remain unpaid.
- (3) If the party is represented by an attorney, the magisterial district judge shall allow the party to proceed *in forma pauperis* upon the filing of a *praecipe* that contains a certification by the attorney that the attorney is providing free legal service to the party and believes the party is unable to pay the costs.**
- (4) A party permitted to proceed *in forma pauperis* shall not be required to pay any costs imposed or authorized by Act of Assembly or general rule which are payable to any court or any public officer or employee.**

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The magisterial district judge shall inform a party permitted to proceed *in forma pauperis* of the option to serve the complaint by mail in the manner permitted by these rules.

A party permitted to proceed *in forma pauperis* has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

(5) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed *in forma pauperis*, the exonerated costs shall be taxed as costs and paid to the magisterial district judge by the party paying the monetary recovery. In no event shall the exonerated costs be paid to the indigent party.

(6) The petition for leave to proceed *in forma pauperis* and affidavit shall be substantially in the following form:

[Caption]

Petition

I hereby request that I be permitted to proceed *in forma pauperis* (without payment of the filing and service costs). In support of this I state the following:

1. I am the plaintiff in the above matter and because of my financial condition am unable to pay the costs for filing and service of this action.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the costs is true and correct:

(a) Name: _____

Address: _____

(b) Employment

If you are presently employed, state

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Employer: _____

Address: _____

Salary or wages per month: _____

Type of work: _____

If you are presently unemployed, state

The date of my last employment was: _____

Salary or wages per month: _____

Type of work: _____

(c) Other income that I have received within the past twelve months

Business or profession: _____

Other self-employment: _____

Interest: _____

Dividends: _____

Pension and annuities: _____

Social security benefits: _____

Support payments: _____

Disability payments: _____

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Unemployment compensation and supplemental benefits: _____

Workers' compensation: _____

Public assistance: _____

Other: _____

(d) **Other contributions to household support**

Spouse Name: _____

My Spouse is employed: _____

Employer: _____

Salary or wages per month: _____

Type of work: _____

Contributions from children: _____

Contributions from parents: _____

Other contributions: _____

(e) **Property owned**

Cash: _____

Checking account: _____

Savings account: _____

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Certificates of deposit: _____

Real estate (including home): _____

Motor vehicle: Make _____, Year _____

Cost _____, Amount owed \$ _____

Stocks; bonds: _____

Other: _____

(f) **Debts and obligations**

Mortgage: _____

Rent: _____

Loans: _____

Other: _____

(g) **Persons dependent upon me for support**

Spouse Name: _____

Ages of Minor Children, if any: _____

Other persons:

Name: _____

Relationship: _____

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4. I understand that I have a continuing obligation to inform the Court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: _____

Petitioner: _____

Action by the Magisterial District Judge: _____

Date: _____

Magisterial District Judge: _____

Note: This Rule substantially follows Pa.R.C.P. No. 240. Under subparagraph E(4), “any costs” includes all filing, service, witness, and execution costs.

EXPLANATORY COMMENT—1990

Rule 206 governing costs is revised by adding a new subdivision A and designating present subdivisions A and B as subdivisions B and C respectively. New subdivision A states the present practice of requiring the payment of the fees for filing the complaint at the time the action is commenced. The subdivision acknowledges that a statute or the principle of an in forma pauperis may dictate a different practice in a particular case. New subdivisions B and C incorporate prior subdivision A and B without change except for a corrected cross-reference in subdivision B. There is no change in practice or procedure with respect to costs.

EXPLANATORY COMMENT—1992

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Rule 206 provides for the right to proceed in forma pauperis. Even though the Judicial Code provides for in forma pauperis proceedings for all courts under the Unified Judicial System, such proceedings have never been instituted at the minor courts level. This Rule is substantially identical to Pa.R.C.P. No. 240 and applies to all civil actions and proceedings except for proceedings pursuant to the Protection From Abuse Act.

In addition, the Note to Rule 206 conforms Rule 206 with the provisions of Section 1725.1 of the Judicial Code. Rule 206A provides for the assessment and collection of costs and fees in civil cases, and the Rule sets forth that costs to be recovered by the successful litigant shall include all service costs and fees. Since the Rule was inconsistent with Section 1725.1, which establishes that the cost of postage and registered mail in civil cases shall be borne by the plaintiff, the Note eliminates this inconsistency by specifying that service costs or fees refer only to personal service since mail costs are to be borne by the plaintiff.

Furthermore, the Note provides that District Justices shall accept the Civil Action Complaint without payment of the appropriate filing fees when said complaint is filed with an in forma pauperis petition.]

– The following text is entirely new –

Rule 206.1 Application to Waive Fees and Costs (*In Forma Pauperis*).

A party who is without financial resources may seek or obtain a waiver of certain fees and costs pursuant to Pa.R.J.A. 1990.

Comment: Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of certain fees and costs. See Pa.R.J.A. 1990(a). The eligibility criteria at Pa.R.J.A. 1990(b) should inform the party whether to proceed by application or *praecipe*.

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Rule 1.40 [In Forma Pauperis] Application to Waive Fees and Costs (In Forma Pauperis).

[Pa.R.C.P. No. 240 shall apply in every action or proceeding before a court covered by these Rules.] A party who is without financial resources may seek or obtain a waiver of certain fees and costs pursuant to Pa.R.J.A. 1990.

[Explanatory] Comment: [Under Pa.R.C.P. No. 240, a party who is found by the court to be without financial resources to pay the costs of filing a legal paper or other costs of an action or proceeding before the court shall have such costs waived.] Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of certain fees and costs. See Pa.R.J.A. 1990(a). The eligibility criteria at Pa.R.J.A. 1990(b) should inform the party whether to proceed by application or *praecipe*. This Rule does not apply in matters before a Register of Wills

Pennsylvania Rules of Criminal Procedure

Rule 460. Notice of Appeal.

(G) A defendant may seek or obtain a waiver of any filing fees, pursuant to Pa.R.J.A. 1990, when filing a notice of appeal pursuant to this rule.

Comment: This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

For dismissal upon satisfaction or by agreement in summary cases, as defined in Rule 103, that have been appealed to the court of common pleas, see Rule 463.

With regard to subdivision (G), Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a *praecipe* of counsel should be filed at the same docket as the notice of appeal. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or *praecipe*.

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Rule 490. Procedure for Obtaining Expungement in Summary Cases;
Expungement Order.

(D) A defendant may seek or obtain a waiver of any filing fees, pursuant to Pa.R.J.A. 1990, when filing a petition for expungement pursuant to this rule.

Comment: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

With regard to subdivision (D), Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a *praecipe* of counsel should be filed at the same docket containing the records for which expungement is sought. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or *praecipe*.

Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases;
Expungement Order.

(D) A defendant may seek or obtain a waiver of any filing fees, pursuant to Pa.R.J.A. 1990, when filing a petition for expungement pursuant to this rule.

Comment: This rule, adopted in 2018, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

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With regard to subdivision (D), Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a praecipe of counsel should be filed at the same docket containing the records for which expungement is sought. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or praecipe.

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

* * *

(D) A defendant may seek or obtain a waiver of any filing fees, pursuant to Pa.R.J.A. 1990, when filing a petition for expungement pursuant to this rule.

Comment: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

* * *

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

With regard to subdivision (D), Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a praecipe of counsel should be filed at the same docket containing the records for which expungement is sought. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or praecipe.

Rule 791. Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access.

* * *

(D) A defendant may seek or obtain a waiver of any filing fees, pursuant to Pa.R.J.A. 1990, when filing a petition for order for limited access pursuant to this rule.

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Comment: Section 9122.1 of the Criminal Code provides for an order limiting dissemination of a record of a criminal conviction for a misdemeanor of the second degree, a misdemeanor of the third degree, or an ungraded misdemeanor which carries a maximum penalty of no more than two years only to a criminal justice agency or government agency. This rule, adopted in 2016, provides the procedures for requesting and ordering an order for limited access as provided in the statute.

* * *

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

With regard to subdivision (D), Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a praecipe of counsel should be filed at the same docket containing the records for which an order for limited access is sought. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or praecipe.

Pennsylvania Rules of Juvenile Court Procedure

Rule 174. Waiver of Filing Fee for Motion to Expunge or Destroy Records.

A movant may seek or obtain a waiver of any filing fees pursuant to Pa.R.J.A. 1990 for a motion to expunge or destroy records permitted under Pa.R.J.C.P. 170.

Comment: Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. An application for a waiver or a *praecipe* of counsel should be filed at the same docket containing the records the juvenile seeks to expunge or destroy. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the movant whether to proceed by application or *praecipe*.

Rule 1174. Waiver of Fees and Costs.

A party may seek or obtain a waiver of any fees or costs pursuant to Pa.R.J.A. 1990.

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Comment: Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the party whether to proceed by application or *praecipe*.

Pennsylvania Rules of Appellate Procedure

(The following is an entirely new rule.)

Rule 550. Waiver of Fees and Costs Required Under Chapter 27.

The fees and costs required under Chapter 27 (Fees and Costs in Appellate Courts and on Appeal), Pa.R.A.P. 2701-2271, may be waived for a party by continuing an existing waiver or obtaining a new waiver, as provided in these rules.

Comment: A party continuing or obtaining a waiver is commonly described as “proceeding *in forma pauperis*.”

Relief from requirements for posting a supersedeas bond in civil matters must be sought under Pa.R.A.P. 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by Pa.R.A.P. 1762 (release in criminal matters). Under Pa.R.A.P. 123 (applications for relief), applications for relief pursuant to Pa.R.A.P. 552 (new waiver of fees and costs for purposes of appeal) and other rules may be combined into a single document.

Rule 551. Continuation of [In Forma Pauperis Status] Prior Waiver of Fees and Costs for Purposes of Appeal.

[(a) **General rule.**—A party who has been granted leave by a lower court to proceed in forma pauperis may proceed in forma pauperis in an appellate court upon filing with the clerk of the lower court two copies of a verified statement stating:

- (1) The date on which the lower court entered the order granting leave to proceed in forma pauperis.
- (2) That there has been no substantial change in the financial condition of the party since such date.

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- (3) That the party is unable to pay the fees and costs on appeal.
- (b) **Effect on filing fees.**—A verified statement conforming to Subdivision (a) of this rule, papers transmitted therewith, and papers subsequently tendered by a party which has filed such a verified statement, shall be filed by any clerk who has notice of such filing without the payment of any fee required under Chapter 27 (fees and costs in appellate courts and on appeal).

Official Note: Ordinarily the copies of the verified statement under this rule would be filed with the clerk of the lower court at the time copies of the notice of appeal are filed under Rule 905 (filing of notice of appeal). See note to Rule 124 (form of papers; number of copies) as to method of counting number of copies.]

[EXPLANATORY COMMENT--1979

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.]

(The following is entirely new rule text.)

- (a) **General Rule.** A previously granted waiver of fees and costs pursuant to Pa.R.J.A. 1990 (application to waive fees and costs) shall continue in an appeal of the same case in the appellate court.
- (b) **Verified Statement.** A court may, by order or rule, require a party previously granted a waiver to file a verified statement setting forth:
 - (1) The date on which the trial court entered the order granting the waiver;
 - (2) There has been no substantial change in the financial condition of the party since such date; and
 - (3) The party is unable to pay the fees and costs on appeal.

- (c) **Effect on Fees and Costs.** The waiver continued pursuant to subdivision (a) shall permit the filing of an appeal and any related documents without the payment of any fees or costs required under Chapter 27.

**Rule 552. [Application to Trial Court for Leave to Appeal *In Forma Pauperis*]
New Waiver of Fees and Costs for Purposes of Appeal.**

- [(a) **General rule.**—A party who is not eligible to file a verified statement under Pa.R.A.P. 551 (continuation of in forma pauperis status for purposes of appeal) may apply to the trial court for leave to proceed on appeal in forma pauperis. The application may be filed before or after the taking of the appeal, but if filed before the taking of the appeal, the application shall not extend the time for the taking of the appeal.
- (b) **Accompanying verified statement.**—Except as prescribed in paragraph (d) of this rule, the application shall be accompanied by a verified statement substantially conforming to the requirements of Pa.R.A.P. 561 (form of IFP verified statement) showing in detail the inability of the party to pay the fees and costs provided for in Chapter 27 (fees and costs in appellate courts and on appeal).
- (c) **No filing fee required.**—The clerk of the trial court shall file an application under this rule without the payment of any filing fee.
- (d) **Automatic approval in certain cases.**—If the applicant is represented by counsel who certifies on the application or by separate document that the applicant is indigent and that such counsel is providing free legal service to the applicant, the clerk of the trial court shall forthwith enter an order granting the application. The clerk may accept and act on an application under this paragraph without an accompanying verified statement by the party.
- (e) **Consideration and action by the court.**—Except as prescribed in paragraph (d) of this rule, the application and verified statement shall be submitted to the court, which shall enter its order thereon within 20 days from the date of the filing of the application. If the application is denied, in whole or in part, the court shall briefly state its reasons.

- (f) **Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.**—An application filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: Extends the substance of former Supreme Court Rule 61(b) (part) and 61(c) (part) to the Superior and Commonwealth Courts and provides for action by the clerk in lieu of the court. It is anticipated that an application under this rule ordinarily would be acted upon prior to the docketing of the appeal in the appellate court and the transmission of the record.

Relief from requirements for posting a supersedeas bond in civil matters must be sought under Pa.R.A.P. 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by Pa.R.A.P. 1762 (release in criminal matters), but under Pa.R.A.P. 123 (applications for relief) and applications under Pa.R.A.P. 552 (or 553) and other rules may be combined into a single document.]

[EXPLANATORY COMMENT—1979

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.]

(The following is entirely new rule text.)

- (a) **General Rule.** A party who was not previously granted a waiver of fees and costs may seek a waiver of fees and costs by filing an application or *praecipe* of counsel pursuant to Pa.R.J.A. 1990 at the same time as the commencement of the action in the appellate court. Any application filed with the appellate

court shall contain the certificate of compliance required by Pa.R.A.P. 127 (confidential information and confidential documents; certification).

- (b) **Remand.** An appellate court may remand an application and any supplemental information to a court of record for a hearing and decision. The decision by the court of record shall be rendered within 30 days of the date of the remand order unless otherwise directed by the appellate court.
- (c) **Unemployment Compensation Cases.** Any fees and costs required under Chapter 27 shall be deemed waived for a claimant-appellant in an unemployment compensation matter without the need for an application or *praecipe*.

Comment: If an application or *praecipe* is not filed when an action is commenced, the action will be docketed but all applicable fees and costs will be required to be paid before proceeding. See generally Pa.R.A.P. 902 (manner of taking appeal).

A record hearing is necessary when an application cannot be granted based upon the application and any supplemental information submitted to the appellate court. Subdivision (b) authorizes an appellate court to remand the application to a court of record, if necessary.

Rule 553. [Application in Appellate Court] Obligation to Inform of Improved Financial Circumstances.

- [(a) **General rule.**—A party who has been denied relief under Pa.R.A.P. 552, or who has been unable to file an application under such rule because the matter is an original action in the appellate court, or a petition for review or petition for specialized review proceeding relating to a government unit other than a court, or for any other reason, may apply to the appellate court for leave to proceed in forma pauperis in the appellate court.
- (b) **Form and procedure.**—An application under this rule shall be governed by Pa.R.A.P. 552 so far as it may be applied.

Official Note: Unlike the prior rule, this rule makes clear that an application may be made in the appellate court even if it has been denied in the trial court.]

(The following is entirely new rule text.)

A party for whom Chapter 27 fees and costs have been waived has a continuing obligation to inform the appellate court of an improvement in the financial circumstances of the party such that the party would no longer be eligible for a waiver. Counsel for a party shall likewise be under a continuing obligation to inform the appellate court of an improvement affecting eligibility within a reasonable time after counsel learns of it.

Comment: For eligibility of a waiver, see Pa.R.J.A. 1990(b).

Rule 554. [Effect of Application and Approval Thereof] Appellate Review.

- [(a) **Appeal taken before application filed.**—If an application under Rule 552 (application to lower court for leave to appeal in forma pauperis) or Rule 553 (application in appellate court) is not filed before an appeal is taken, all applicable filing fees which are due before such an application is filed shall be treated as unpaid for purposes of Chapter 27 (fees and costs in appellate courts and on appeal).
- (b) **Appeal taken before application acted upon.**—If an application under Rule 522 or Rule 553 has been filed but has not been acted upon any clerk who has notice of such filing shall accept any papers relating to the appeal without the payment of any fees required under Chapter 27. Transmission of a copy of the application under Rule 552 pursuant to Rule 905(b) (transmission to appellate court) or otherwise shall constitute notice to an appellate prothonotary of the pendency thereof for the purposes of this rule. If the application under Rule 552 or Rule 553 is thereafter denied the applicant shall pay all applicable filing fees required under Chapter 27.
- (c) **Appeal taken after application granted.**—If an appeal is taken after an application under Rule 552 has been granted, the party shall proceed under Rule 551 (continuation of in forma pauperis status for purposes of appeal), except that a copy of the order granting the application may be substituted for the verified statement required by Rule 551.

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Official Note: In addition to its elimination of the requirement for the payment of fees, IFP status eliminates the requirement of reproducing the record, see Rule 2151(b) (in forma pauperis), and reduces the number of copies of the brief required to be served and filed. See Rule 2187(c) (in forma pauperis).]

[EXPLANATORY COMMENT—1979

In forma pauperis rules are revised to permit the appellate prothonotary to permit an appeal to be taken without payment of fee where the IFP documentation is completed promptly after demand therefor, to reflect the integration (by the amendments to Rules 905 and 907) of appellate docketing and the filing of the notice of appeal in the lower court, and to conform the procedures on nonpayment of required filing fees with the general requirements of Chapter 27.]

(The following is entirely new rule text.)

Appellate review of an application to waive fees and costs denied in a court of record shall be initiated by petition for specialized review in accordance with Pa.R.A.P. 1601-1606, subject to the procedures set forth in Pa.R.A.P. 1614.

Rule 555. [Obligation to Inform of Improved Financial Circumstances] Reserved.

[A party permitted to proceed in forma pauperis has a continuing obligation to inform the appellate court of improvement in the financial circumstances of the party. Counsel for a party shall likewise be under a continuing obligation to inform the appellate court of such improvement within a reasonable time after counsel learns of it.

Note: Extends former Supreme Court Rule 61(e) to the Superior and the Commonwealth Courts.]

Rule 556. [Unemployment Compensation Cases] Reserved.

[A claimant-appellant in an unemployment compensation matter may proceed in forma pauperis without applying for leave to do so. The petition for review, papers transmitted therewith and papers subsequently tendered by the part in such a matter shall

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be filed by the clerk without the payment of any fee required under Chapter 27 (fees and costs in appellate courts and on appeal).

Note: A claimant-appellant in a worker's compensation matter, who was within the scope of the former version of this Rule, remains free to apply for leave to proceed in forma pauperis pursuant to Rule 553.]

Rule 561. [Form of IFP Verified Statement] Reserved.

[A verified statement under this chapter in support of an application for leave to proceed in forma pauperis shall be in substantially the following form:

[Caption]

_____ (Insert name of applicant) states under the penalties provided by 18 Pa.C.S. § 4904 (unsworn falsification to authorities) that:

1. I am the _____ (plaintiff or defendant) in the above action and because of my financial condition am unable to pay the following fees and costs:
(state with particularity the relief requested, e.g., appellate filing fees, costs of reproducing records or briefs, or filing of supersedeas security if irreparable harm would result if not waived.)
2. My responses to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.
 - (a) Are you presently employed?
 - (1) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

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(2) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

(b) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source?

If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

(c) Do you own any cash or checking or savings account?

If the answer is yes, state the total amount of the items owned.

(d) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If the answer is yes, describe the property and state its approximate value and the amount of any encumbrances.

(e) List the persons, if any, who are dependent upon you for support and state your relationship to those persons.

(f) List all your debts and obligations.

3. I understand that a false statement or answer to any question in this verified statement will subject me to the penalties provided by law (misdemeanor of the second degree).

Signature of Applicant

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Note: Extends former Supreme Court Rule 61 (form) to the Superior and Commonwealth Courts and makes no change in substance other than the substitution of the statutory verification for an affidavit.]

(The following is an entirely new rule.)

Rule 1614. Review of Orders Denying Waiver of Fees and Costs.

Appellate review of an order denying an application for a waiver of fees and costs by a court of record pursuant to Pa.R.J.A. 1990 shall be initiated by petition for specialized review pursuant to Pa.R.A.P. 1601-1606 subject to the following:

- (a) **Time for Filing.** A petition for specialized review shall be filed within ten days after the entry of the order denying an application for the waiver of fees and costs by a court of record.
- (b) **Ex Parte Review.** Appellate review shall be conducted in an *ex parte* manner. As such, no other party shall be named as respondent, only the court of record denying the application shall be served the petition, and no response to the petition by any other party shall be permitted.
- (c) **Contents.** In addition to the content requirements of Pa.R.A.P. 1603(c)(1)-(c)(5) and (c)(7)-(c)(8), the requirement of Pa.R.A.P. 1603(c)(6) shall be satisfied with a concise statement of the reasons why the court of record that denied the application erred.

Comment: See Pa.R.A.P. 701 (petitions for specialized review shall be filed in the appellate court having jurisdiction of final order in such matters).

Subdivision (b) continues the *ex parte* procedure of Pa.R.J.A. 1990(d)(3) to appellate review. The proscriptions of subdivision (b) are intended to limit the application of Pa.R.A.P. 1603(a) (captions and parties), Pa.R.A.P. 1604 (service), and Pa.R.A.P. 1605 (response to petition).

To determine the number of copies to be filed, see Pa.R.A.P. 124(c) and its Official Note.