

Effective 10/1/2024

78A-2-302 Waiver of fees, costs, and security -- Indigent litigants -- Affidavit.

(1) As used in Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means:

- (i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental condition, no contest; and
- (ii) a conviction of any crime or offense.

(b) "Indigent" means a financial status that results from a court finding that a petitioner is financially unable to pay the fee, a cost, or give security.

(c) "Prisoner" means an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if :

- (a) the individual submits an affidavit demonstrating that the individual is indigent; or
- (b) the cause is a petition for expungement and the individual provides the court with proof that another court granted a waiver of the fee for a petition for expungement as described in Subsection 77-40a-305(12)(b).

(3) A court shall find an individual indigent if the individual's affidavit under Subsection (2) demonstrates:

(a) for a cause that is not a petition for expungement, the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(b) for a cause that is a petition for expungement:

- (i) if the individual has a household size of one, two, or three, the individual has an income level at or below 150% of the United States poverty level for a household size of three, as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services; or
- (ii) if the individual has a household size of four or more, the individual has an income level at or below 150% of the United States poverty level for that individual's household size, as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(c) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

(d) the individual receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

(e) the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

(4) An affidavit demonstrating that an individual is indigent under Subsection (3)(e) shall contain complete information on the individual's:

- (a) identity and residence;
- (b) amount of income, including any government financial support, alimony, or child support;
- (c) assets owned, including real and personal property;
- (d) business interests;
- (e) accounts receivable;
- (f) securities, checking and savings account balances;
- (g) debts; and

- (h) monthly expenses.
- (5) If the individual under Subsection (3) is a prisoner, the prisoner shall disclose the amount of money held in the prisoner's trust account at the time the affidavit under Subsection (2) is executed in accordance with Section 78A-2-305.
- (6) An affidavit of indigency under this section shall state the following:
 - I, (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.
- (7) The Administrative Office of the Courts shall include on a form for an affidavit of indigency the following warning: "It is a crime for anyone to intentionally or knowingly provide false or misleading information to the court when seeking a waiver of a court fee."

Amended by Chapter 180, 2024 General Session