

78A-2-305 Effect of filing affidavit -- Procedure for review and collection.

- (1)
 - (a) Upon receipt of the oath or affirmation filed with any Utah court by a prisoner, the court shall immediately request the institution or facility where the prisoner is incarcerated to provide an account statement detailing all financial activities in the prisoner's trust account for the previous six months or since the time of incarceration, whichever is shorter.
 - (b) The incarcerating facility shall:
 - (i) prepare and produce to the court the prisoner's six-month trust account statement, current trust account balance, and aggregate disposable income; and
 - (ii) calculate aggregate disposable income by totaling all deposits made in the prisoner's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.
- (2) The court shall:
 - (a) review both the affidavit of impecuniosity and the financial account statement; and
 - (b) based upon the review, independently determine whether or not the prisoner is financially capable of paying all the regular fees and costs associated with filing the action.
- (3) When the court concludes that the prisoner is unable to pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the prisoner's current trust account balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.
- (4)
 - (a) After payment of the initial partial filing fee, the court shall require the prisoner to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.
 - (b) The agency having custody of the prisoner shall:
 - (i) garnish the prisoner's account each month; and
 - (ii) once the collected fees exceed \$10, forward payments to the clerk of the court until the filing fees are paid.
 - (c) Nothing in this section may be construed to prevent the agency having custody of the prisoner from withdrawing funds from the prisoner's account to pay court-ordered restitution.
- (5) Collection of the filing fees continues despite dismissal of the action.
- (6) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.
- (7) If the prisoner is filing an initial divorce action or an action to obtain custody of the prisoner's children, the following procedures shall apply for review and collection of fees and costs:
 - (a) Upon filing an oath or affirmation with any Utah court by a prisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be paid in full or be waived in whole or in part. The court shall require a full or partial filing fee when the prisoner's financial information demonstrates an ability to pay the applicable court fees or costs.
 - (b)
 - (i) If a prisoner's court fees or costs are completely waived, and if the prisoner files an appeal, the court shall immediately file any complaint or papers on appeal and complete all necessary action as promptly as if the litigant had paid all the fees and costs in full.
 - (ii) If a prisoner is impecunious, the constable and sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary in the prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.
 - (c)

- (i) If a prisoner files an affidavit of impecuniosity, the judge shall question the prisoner at the time of the hearing on the merits of the case as to the prisoner's ability to pay.
- (ii) If the judge determines that the prisoner is reasonably able to pay court fees and costs, the final order or decree shall be entered, however the prisoner may not seek enforcement or modification of the decree or order until the prisoner has paid the fees or costs in full.
- (iii) A judge may waive the restrictions placed on the prisoner in Subsection (7)(c)(ii) upon a showing of good cause.

Amended by Chapter 226, 2010 General Session