

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.C.P. No. 240 and
Proposed Adoption of Pa.R.J.A. No. 1990**

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. No. 240 and the adoption of Pa.R.J.A. No. 1990 to govern the procedure for requesting and determining a request to proceed *in forma pauperis* for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor be officially 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 Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **October 9, 2020**. 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.

By the Civil Procedural Rules Committee,

John J. Hare
Chair

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

The Civil Procedural Rules Committee is considering proposing the amendment of Rule 240 and the adoption of new Rule of Judicial Administration 1990 to govern the request to proceed *in forma pauperis* (IFP). The Committee undertook review of this issue based, in part, on a suggestion that the current procedure in Rule 240 “to mitigate the formidable costs of litigation to the indigent ensuring that ... courthouse doors are always open, even to those who are poor[,] ... may prove illusory....” *Shore v. Pa. Dep’t of Corrections*, 179 A.3d 441 (Pa. 2018) (Justice Wecht, concurring statement).

Current Rule 240 sets forth the procedure to request to proceed IFP based upon an inability to pay court costs. The rule 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. Rule 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. Rule 240 does not contain any objective criteria for the judge to make a determination as to whether a petitioner qualifies to proceed *in forma pauperis*.

Although Rule 240 governs requests to proceed *in forma pauperis* in the court of common pleas in civil matters, such requests are considered by other courts in the Unified Judicial System. See, e.g., Pa.R.A.P. 551-561; Pa.R.C.P.M.D.J. No. 206. As a result, a joint subcommittee was formed to examine the current rule, identify the deficiencies of current practice, and develop a framework to address the concerns raised by the concurring statement in *Shore* with the goal of establishing a procedure to be used among the several courts. In addition to delegates from the Civil Procedural Rules Committee, the joint subcommittee consisted of delegates from the Appellate Court Procedural Rules Committee, Domestic Relations Procedural Rules Committee, and the Minor Court Rules Committee.

The joint subcommittee identified the current rules of procedure governing IFP: Pa.R.C.P. No. 240, Pa.R.C.P.M.D.J. No. 206, and Pa.R.A.P. 551, 552, 553, 561, 2151. Pa.R.C.P. No. 240 and Pa.R.C.P.M.D.J. No. 206 are nearly identical. They prescribe the procedure for applying for IFP status. Upon reviewing the rules, the joint subcommittee identified three types of IFP petitioners:

(1) *pro bono* - the rules grant a party IFP status if they are represented by an attorney upon the filing of a *praecipe* by the attorney certifying that the party is indigent;

(2) *pro se* - a self-represented party is required to file a petition to proceed IFP as well as an affidavit disclosing income, assets, and liabilities for a determination for IFP status; and

(3) *pro se prisoner* - self-represented prisoners are required to follow the same procedure as any *pro se* party, but they are also subject to the Pennsylvania Litigation Reform Act, 42 Pa.C.S. §§ 6601 *et seq.*

The joint subcommittee also reviewed rules and forms used by the federal courts and other states. The criteria used by some states for granting IFP status is “adjunctive eligibility,” *i.e.*, if a litigant has qualified for and is receiving benefits from a government poverty program, *e.g.*, Supplemental Nutrition Assistance Program, the litigant has a presumption of eligibility for IFP status. Other states use a percentage of the federal poverty income guidelines as the criteria for determining IFP status.

The joint subcommittee also recognized that the current procedure varies from county to county. Some counties review petitions for IFP status in motions court, other counties adjudicate them after administrative review without hearing. The joint subcommittee concluded that a uniform procedure for determining IFP status would be beneficial for both litigants and courts.

The joint subcommittee recommended that the procedure be placed within the Rules of Judicial Administration. With regard to civil practice, Rule 240 would be amended to cross-reference a Rule of Judicial Administration, but retain any procedure that is specific to civil actions. See, *e.g.*, Pa.R.A.P. 240(j)(2) (governing actions commenced by a writ of summons). The placement of the IFP procedure within a Rule of Judicial Administration is intended to ensure uniformity in its application regardless of the court in which IFP status is requested.

The proposed Rule of Judicial Administration provides as follows:

Subdivision (a) sets forth the scope of the rule and specifies the costs and fees that may be waived pursuant to the rule.

Subdivision (b) defines a litigant eligible for IFP status as a person who is without financial resources according to the criteria set forth in subdivision (b)(1) or who will suffer a substantial financial hardship to pay fees and costs according to the criteria set forth in subdivision (b)(2).

Subdivision (b)(1) addresses litigants without financial resources and provides three categories for those persons who are without financial resources. They will automatically qualify for IFP status upon providing appropriate documentation. They include any person who:

(1) receives needs-based public assistance;

(2) is represented by an attorney who is practicing in a legal aid organization or who certifies that he or she is providing the party with free legal services and believes the party is unable to pay the fees and costs. While no further documentation is required of a legal aid attorney, the attorney certifying his or her *pro bono* representation and the party's inability to pay fees and costs must complete and sign a *Praeceptum* to Waive Fees and Costs. The suggested form is set forth in subdivision (i); or

(3) meets an income and asset requirement of a gross income that is 200% or less of the federal poverty income guidelines for the party's household size, and assets of less than \$10,000 (excluding the party's home and one vehicle).

Subdivision (b)(2) provides that a litigant who does not qualify under subdivision (b)(1) may nonetheless apply for IFP status if the litigant believes that he or she cannot pay without a substantial financial hardship and provides additional information for the court to make a determination. For these litigants, the court is required to conduct a hearing to determine eligibility.

Subdivision (c) requires a party to file an application to waive fees and costs, provide necessary information and supporting documentation as specified on the form set forth in subdivision (h). It also prohibits the filing of an application for IFP status before commencing an action and sets forth the procedure when an application is filed with the commencement of an action or after the commencement of an action.

Subdivision (d) requires action by the court on the application to waive fees and costs. It contemplates that the court or its designee will review the application to determine IFP status pursuant to subdivision (b)(1), *i.e.*, those litigants without financial resources. The court may deny an application only after conducting a record hearing and finding that the application is incomplete and the party either cannot provide the missing information, cannot provide documentation supporting the party's application, included inaccurate information on the application or the supporting documents, or the court concludes the party will not suffer a substantial financial hardship. It is important to note that this is a departure from the current rule and current practice. The requirement for a record hearing is intended to address the concern that there be a record establishing the reasons for the denial in order to aid the appellate court review.

Subdivision (e) carries over the language of Rule 240(g) providing when a party with IFP status subsequently obtains a monetary recovery by judgment or settlement, the party paying the monetary recovery shall pay the filing office the waived fees and costs from the monetary recovery as taxed costs.

Subdivision (f) carries over the language of Rule 240(j)(1) providing that when an action is commenced at the same time as the filing of an application for IFP status, the court may, prior to acting on the application, dismiss the action if the allegation of poverty is unsubstantiated or the action is frivolous.

Subdivision (g) sets forth the suggested form for the Application to Waive Fees and Costs required by subdivision (c).

Subdivision (h) sets forth the suggested form for the *Praecipe* to Waive Fees and Costs required by subdivision (b)(1)(ii)(B).

The proposed amendment to Rule 240 would include a replacement of the current procedure with a cross-reference to the proposed Rule of Judicial Administration. As noted above, amended Rule 240 would retain the procedure set forth in current subdivision (j)(2), specifying certain requirements when a petition to proceed *in forma pauperis* is filed when commencing an action by a writ of summons, as that procedure applies to civil cases only.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

(This is an entirely new rule.)

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

(a) *Scope.* This rule shall govern the procedure for waiving fees and costs imposed or authorized by an Act of Assembly or general rule that are payable to a court, filing office, or public officer or employee, or require the posting of a bond or other security for costs as a condition for commencing an action, proceeding, or appeal.

Note: The term “action, proceeding, or appeal” excludes those brought pursuant to the Protection From Abuse Act, 23 Pa.C.S. §§ 6101 — 6122 and Protection of Victims of Sexual Violence or Intimidation Act, 42 Pa.C.S. §§ 62A01 — 62A20.

(b) *Eligibility.* A party who is without financial resources, as set forth in subdivision (b)(1), or who will suffer a substantial financial hardship by paying the fees and costs associated with litigation, as set forth in subdivision (b)(2), is entitled to a waiver of fees and costs, in whole or in part.

- (1) *Without Financial Resources.* If the party is eligible under this subdivision and provides documentation supporting eligibility, the court shall order the party’s fees and costs waived without a hearing. A party is 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));
 - (ii) is represented by an attorney:
 - (A) practicing in a legal aid organization; or
 - (B) that certifies he or she is providing the party with free legal services and believes the party is unable to pay the fees and costs. The party shall attach to the application the *Praecipe* to Waive Fees and Costs set forth in subdivision (i), which the attorney has completed and signed; or
 - (iii) meets the following income and asset requirement:

- (A) 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
 - (B) assets less than \$10,000, excluding the party's home and one vehicle.
- (2) *Substantial Financial Hardship.* If a party is ineligible for a waiver of fees and costs under subdivision (b)(1), but the party believes that he or she cannot pay the fees and costs without a substantial financial hardship, the court shall conduct a record hearing to determine the party's eligibility under this subdivision.

Note: See subdivision (d)(2).

- (i) The following factors shall determine whether a substantial hardship exists:
 - (A) the party's gross income, assets, and expenses;
 - (B) 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;
 - (C) employment history;
 - (D) other available financial resources, including resources from individuals who have a duty of support to the party; and
 - (E) other factors affecting the party's income, assets, or expenses.
- (ii) If the party establishes a substantial financial hardship, the court in its discretion may:
 - (A) waive some or all of the fees and costs; or
 - (B) permit the party to file the action with a partial payment in an amount determined by the court with periodic payments in an amount determined by the court until the full amount is paid.

Note: In addition to this rule, an inmate applying for a waiver of fees and costs in prison conditions litigation shall comply with the Pennsylvania Prison Litigation Reform Act, 42 Pa.C.S. §§ 6601 — 6608.

(c) *Application.* A party requesting a waiver of fees and costs shall file an application on the form set forth in subdivision (h) and provide the necessary information and supporting documentation as specified on the application.

- (1) A party may not file an application to waive fees and costs before commencing an action, proceeding, or appeal.
- (2) *Application Filed with the Commencement of an Action, Proceeding, or Appeal.*
 - (i) The filing office shall docket the action, proceeding, or appeal and the application without the party paying the filing fee.
 - (ii) If the court denies the application, the party shall pay the filing fee for commencing the action, proceeding, or appeal.
 - (iii) A party required to pay the filing fee pursuant to subdivision (c)(2)(ii) may not take any further steps in the action, proceeding, or appeal so long as the fee remains unpaid, unless the party requests permission from the court.
- (3) *Application Filed after the Commencement of the Action, Proceeding, or Appeal.*
 - (i) When a party commences an action, proceeding, or appeal without simultaneously filing an application to waive fees and costs, the party shall pay the appropriate fees and costs.
 - (ii) If the court grants the application, the filing office shall not refund the fees and costs previously paid.
- (4) A party granted a waiver of fees and costs, in whole or in part, has a continuing obligation to inform the court of an improvement in the party's financial circumstances that would enable the party to pay the fees and costs.

(d) *Court Action.* After a party files an application to waive fees and costs, the court or an individual designated by the court shall review the application initially to determine whether the party is eligible for a waiver under subdivision (b)(1).

- (1) If a party is eligible for a waiver of fees and costs under subdivision (b)(1), the court shall grant the waiver without a hearing.
- (2) If a party is ineligible under subdivision (b)(1), the court shall conduct a record hearing to determine whether the party is eligible for a waiver under subdivision (b)(2).

Note: See subdivision (b)(2)(i) for the factors establishing a substantial hardship.

- (3) *Denying an Application.* The court may deny an application to waive fees and costs only after a record hearing and if the court finds that the:
 - (i) application is incomplete, and the party cannot provide the court with the missing information;
 - (ii) party cannot provide documentation supporting the party's application;
 - (iii) party included inaccurate information on the application or the accompanying documents; or
 - (iv) party will not suffer a substantial financial hardship from paying the fees and costs associated with the litigation as provided in subdivision (b)(2).
- (4) *Rescinding a Previously Granted Application.* The court may rescind a previously granted waiver of fees and costs if the court finds that the:
 - (i) application or an accompanying document was inaccurate; or
 - (ii) party is able to pay the fees and costs.

Note: See subdivisions (c)(4) and (g).

(5) If the court denies an application or rescinds a previously granted application, the court shall state the reason in its order.

(6) *Application Denied or Rescinded.*

(i) The filing office shall notify the party that the court denied the application or rescinded a previously granted application and provide the party with the court's order.

(ii) If at least ten days have passed after the filing office provided notice to the party as provided in subdivision (d)(6)(i) and the fee remains unpaid, the filing office shall enter an appropriate order terminating the action, proceeding, or appeal.

(iii) The court may reinstate the action, proceeding, or appeal for good cause shown.

(7) Except as provided by subdivision (f), the court shall:

(i) act promptly upon the application; and

(ii) enter its order within 20 days from the application's filing date.

(e) If the court granted a waiver of fees and costs to a party that subsequently obtains a monetary recovery by judgment or settlement, the party paying the monetary recovery shall pay the filing office the waived fees and costs from the monetary recovery as taxed costs.

Note: See subdivision (d)(4)(ii).

(f) *Fivolous Action, Proceeding, or Appeal.* When a party commences an action, proceeding, or appeal simultaneously with the filing of an application to waive fees and costs, the court may dismiss the action, proceeding, or appeal before acting on the application if the court 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 (1989).

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

a. Are you represented by Legal Aid or by an attorney who is representing you for free?

Yes No

b. If an attorney, other than a legal aid attorney, represents you for free, please attach to this application the *Praecipe* to Waive Fees and Costs that was signed by the attorney.

***** If you answered "Yes" to Section 4 skip Section 5. Read Section 6 and sign/date the form. *****

5. If you answered "No" in Sections 3 and 4, please complete this section.

a. I believe I cannot afford to pay the court fees and costs in this case.

b. I receive this monthly gross income (income before paying taxes and other deductions). Do not leave any lines blank. If you do not receive income from that source, put a zero on the line.

***** You must provide documentation or other evidence supporting the information you have included in this Section. Read Section 6 and sign/date the form *****

\$ _____ 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 from other people.

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

\$ _____ Total monthly gross income

c. What is the value of the property you own?

\$ _____ Cash

\$ _____ Bank accounts or other financial assets

\$ _____ Cars or other vehicles

\$ _____ House

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

\$ _____ Total value of property

***** If you are requesting a waiver due to a substantial financial hardship, please complete the following Section related to your expenses *****

d. What are your monthly expenses?

\$ _____ Rent/mortgage payment

\$ _____ Food and household supplies

\$ _____ Utilities, including cell phone

\$ _____ Clothing and other personal expenses

\$ _____ Medical and dental expenses/insurance

\$ _____ Child care

\$ _____ Transportation, including car payments and repairs

\$ _____ Child and spousal support or alimony

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

\$ _____ Total monthly expenses

e. 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?

6. 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

Applicant's Signature

(h) *Praecipe Form.* The *praecipe* required by subdivision (b)(1)(ii)(B) shall be substantially in the following form:

(Caption)

PRAECIPE TO WAIVE FEES AND COSTS

Kindly allow _____, (Plaintiff)(Defendant), to proceed without paying fees and costs.

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

Attorney for _____

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

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 *praecipe* which contains a 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: _____

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: _____

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*

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: _____

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:

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.]

(a) Except as provided in subdivision (b), the procedure for requesting to proceed *in forma pauperis* in all civil actions is set forth in Pennsylvania Rule of Judicial Administration 1990.

(b) If a party commences a civil action by a writ of summons and the party seeks to proceed *in forma pauperis*:

(1) The court shall not act on an 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 and dismiss the action pursuant to Pa.R.J.A. No. 1990(f).

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.