

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 16-9122

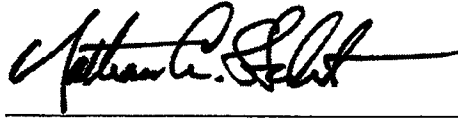
FINAL APPROVAL OF AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE AND THE TEXAS RULES OF APPELLATE PROCEDURE AND OF A FORM STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS

ORDERED that:

1. By order dated May 16, 2016, in Misc. Docket No. 16-9056, the Supreme Court of Texas approved amendments to Texas Rules of Civil Procedure 145 and 502.3 and Texas Rules of Appellate Procedure 20.1, 25, and 32. The Court also approved a form Statement of Inability to Afford Payment of Court Costs and invited public comment on the amendments and the form.
2. The Court has reviewed the public comments and made revisions to the rules and to the form. The final versions are set forth in this order.
3. The amendments are effective September 1, 2016. The amended rules apply to any contest of, or challenge to, a claim of inability to afford payment of court costs that is pending on September 1.
4. The final versions of Texas Rules of Civil Procedure 145 and 502.3 are set forth in clean form. The Court did not make any additional changes to Rule 502.3 during the comment period.
5. The Court has approved amendments to Texas Rules of Civil Procedure 126, 501.2, 502.4, 502.6, 504.1, 506.1, 506.4, and 510.7. The amended version of Rule 126 is set forth in clean form. The amendments to Rules 501.2, 502.4, 502.6, 504.1, 506.4, and 510.7 are demonstrated in redline.
6. The final versions of Texas Rules of Appellate Procedure 20.1, 25.1, and 32.1 are set forth in clean form. The Court did not make any additional changes to Rules 25.1 or 32.1 during the comment period.
7. The Court has approved amendments to Texas Rule of Appellate Procedure 43.4. The amended rule is set forth in clean form.
8. The final version of the Statement of Inability to Afford Payment of Court Costs is attached.

9. The Clerk is directed to:
- a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

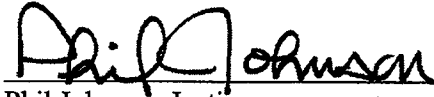
Dated: August 31, 2016.



Nathan L. Hecht, Chief Justice



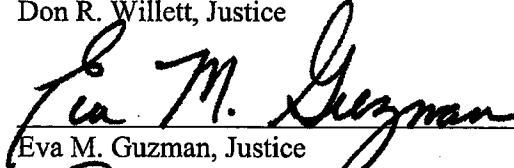
Paul W. Green, Justice



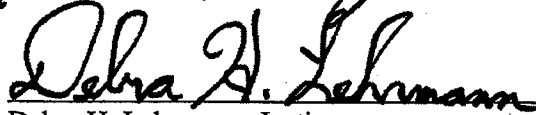
Phil Johnson, Justice



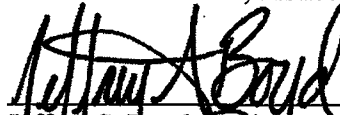
Don R. Willett, Justice



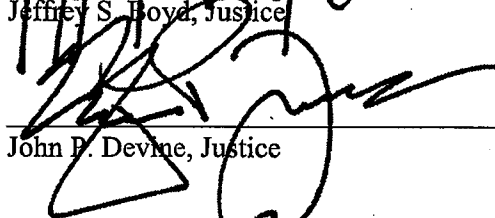
Eva M. Guzman, Justice



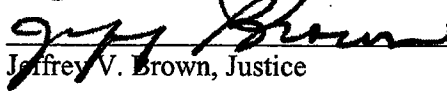
Debra H. Lehmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

Texas Rule of Civil Procedure 145—Clean Version of Final Amended Rule

Rule 145. Payment of Costs Not Required

- (a) *General Rule.* A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, “declarant” means the party filing the Statement.
- (b) *Supreme Court Form; Clerk to Provide.* The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.
- (c) *Costs Defined.* “Costs” mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.
- (d) *Defects.* The clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect is a ground for refusing to file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court—on its own motion or on motion of the clerk or any party—may direct the declarant to correct or clarify the Statement.
- (e) *Evidence of Inability to Afford Costs Required.* The Statement must say that the declarant cannot afford to pay costs. The declarant must provide in the Statement, and, if available, in attachments to the Statement, evidence of the declarant’s inability to afford costs, such as evidence that the declarant:
 - (1) receives benefits from a government entitlement program, eligibility for which is dependent on the recipient’s means;
 - (2) is being represented in the case by an attorney who is providing free legal services to the declarant, without contingency, through:
 - (A) a provider funded by the Texas Access to Justice Foundation;
 - (B) a provider funded by the Legal Services Corporation; or

- (C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services;
 - (3) has applied for free legal services for the case through a provider listed in (e)(2) and was determined to be financially eligible but was declined representation; or
 - (4) does not have funds to afford payment of costs.
- (f) *Requirement to Pay Costs Notwithstanding Statement.* The court may order the declarant to pay costs only as follows:
- (1) *On Motion by the Clerk or a Party.* The clerk or any party may move to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief:
 - (A) that the Statement was materially false when it was made; or
 - (B) that because of changed circumstances, the Statement is no longer true in material respects.
 - (2) *On Motion by the Attorney Ad Litem for a Parent in Certain Cases.* An attorney ad litem appointed to represent a parent under Section 107.013, Family Code, may move to require the parent to pay costs only if the motion complies with (f)(1).
 - (3) *On Motion by the Court Reporter.* When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to require the declarant to prove the inability to afford costs.
 - (4) *On the Court's Own Motion.* Whenever evidence comes before the court that the declarant may be able to afford costs, or when an officer or professional must be appointed in the case, the court may require the declarant to prove the inability to afford costs.
 - (5) *Notice and Hearing.* The declarant may not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

- (6) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.
 - (7) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.
- (g) *Review of Trial Court Order.*
- (1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.
 - (2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.
 - (3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.
 - (4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.
- (h) *Judgment.* The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order under (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person

cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system—filing fees, fees for issuance of process and notices, and fees for service and return—are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs—which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001—is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.