

IN THE SUPREME COURT OF THE STATE OF ARIZONA

FILED
APR 11 2002
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 5-206:)	No. 2002 - <u>31</u>
FEE DEFERRALS AND WAIVERS)	(Replacing Administrative
)	Order No. 2001-89)
)	

The above captioned provision having come before the Arizona Judicial Council on March 14, 2002, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 2001-89.

Dated this 11th day of April, 2002.



CHARLES E. JONES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-206: Fee Deferrals and Waivers

A. Definitions. The following definitions apply to this section:

“Applicant” means a person who asserts the condition of being unable to pay court fees and costs and requests a deferral or waiver of that obligation.

“Application” means a request for deferral or waiver at any point before the end of a case.

“Arizona Department of Corrections (ADOC) inmate” means an incarcerated felon confined to a facility operated by Arizona State Department of Corrections.

“Day” means calendar day including holidays and weekends.

“Deferral” means “either postponement of an obligation to pay fees or establishment of a schedule for payment of fees” as provided in A.R.S. §12-302 (M)(1).

“Fees and costs”, as provided in A.R.S. §12-302 (H), means:

1. Filing fees.
2. Fees for issuance of either a summons or subpoena.
3. Fees for obtaining one certified copy of a temporary order in a domestic relations case.
4. Fees for obtaining one certified copy of a final order, judgment or decree in all civil proceedings.
5. Sheriff, marshal, constable and law enforcement fees for service of process if any of the following applies:
 - a. The applicant established by affidavit that the applicant has attempted without success to obtain voluntary acceptance of service of process.
 - b. The applicant’s attempt to obtain voluntary acceptance of service of process would be futile or dangerous.
 - c. An order of protection or an injunction against harassment in favor of the applicant and against the party sought to be served exists and is enforceable.

6. The fee for service by publication if service is required by law and if the applicant establishes by affidavit specific facts to show that the applicant has exercised due diligence in attempting to locate the person to be served and has been unable to do so.

7. Court reporter's fees for the preparation of court transcripts if the court reporter is employed by the court.

8. Appeal preparation and filing fees at all levels of appeal and photocopy fees for the preparation of the record on appeal pursuant to section 12-119.01, 12-120.31 and 12-2107 and section 12-284, subsection A.

"Further deferral" means "the establishment of a schedule for payment of fees" as provided in A.R.S. §12-302 (M)(2).

"Non-ADOC inmate" means an incarcerated felon confined to facilities in Arizona other than operated by the Arizona State Department of Corrections or to a facility outside of Arizona.

"Permanently unable to pay" means "the applicant's income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life and the income and liquid assets are unlikely to change in the foreseeable future" as provided in A.R.S. §12-302 (D).

"Postponed fees" means the applicant has been ordered to pay fees due at the end of the case according to an established schedule of payments.

"Special commissioner" means a person appointed by the presiding judge to determine an applicant's eligibility for a deferral or waiver.

"Supplemental application" means the form used to request waiver or further deferral at the conclusion of a case.

"Waiver" means the applicant is not required to pay the fees unless the applicant's financial circumstances have changed during the action.

B. Purpose. The purpose of this section is to provide access to the courts for litigants unable to pay court fees and costs and to establish, standardize and maintain uniform procedures and forms in accordance with A.R.S. §12-302.

C. Administration and Adoption of Forms. The Administrative Office of the Courts (AOC) shall adopt forms and procedures for deferrals and waivers of court fees. Courts shall make these forms available for use by the public at no cost. Courts may exercise discretion regarding technical formatting of forms (for example, number of pages, line and margin spacing, and font size); use multi-part, carbonless paper; and develop non-English translations. Courts shall submit any other proposed alteration to or deviation from the forms as adopted, including any change in wording, to the administrative director for approval prior to use. The administrative

director is authorized to approve requested modifications that are consistent with statutes and court rules and to approve revisions to reflect changes in laws, court rules or procedures and to make other administrative amendments or corrections as necessary.

D. Applications.

1. Applications shall be in writing on the approved forms except that in limited jurisdiction courts the applicant may make an application by verbal avowal in open court. The court shall deny incomplete applications. The court shall issue a written order on every application.
2. As provided by A.R.S. §12-302(F):

At the time an applicant signs and submits the application for deferral to the court, the applicant shall acknowledge under oath and sign a consent to judgment. By signing the consent to judgment, the applicant consents to judgment being entered against the applicant for all fees and costs that are deferred and that remain unpaid after thirty calendar days following the entry of final judgment or order.

E. Financial Criteria.

1. Statutory Eligibility. As provided in A.R.S. §12-302(C), the court shall grant an application for deferral of fees and costs if the applicant establishes by affidavit, including supporting documentation, that the applicant either:
 1. Is receiving benefits pursuant to one or more of the following programs:
 - (a) The temporary assistance for needy families program established by section 403 of title 4 of the social security act as it exists after August 21, 1996.
 - (b) The food stamp program (7 United States Code sections 2011 through 2029).
 - (c) The general assistance program pursuant to title 46, chapter 2, article 2.
 2. Is receiving benefits pursuant to the supplemental security income program (42 United States Code sections 1381 through 1385).
 3. Has an income that is insufficient or barely sufficient to meet the daily essentials of life and that includes no allotment that could be budgeted for the fees and costs that are required to gain access to the court. In

considering insufficient income pursuant to this paragraph, the court may consider the following as evidence of insufficient income:

(a) The applicant has a gross income that as computed on a monthly basis is 150% or less of the current poverty level established by the United States department

(b) The applicant's income is considered to be sufficient, but the applicant provides proof of extraordinary expenses, including medical expenses, costs of care for elderly or disabled family members or other expenses that are deemed extraordinary, that reduce the applicant's gross monthly income to at or below 150% of the current poverty level established by the United States department of health and human services. Gross monthly income includes the applicant's share of community property income.

2. Other Assets. The court shall consider assets other than cash listed on the financial questionnaire as a basis for possible further inquiry regarding an applicant's income and not as the sole determinant for denial of deferral or waiver. The court shall consider the applicant's income, expenses, and family circumstances in determining whether cash assets are available for the required fees.

F. Financial Eligibility for Deferral. The court shall grant a deferral if the applicant meets the financial criteria set forth in A.R.S. §12-302(E)(1). A deferral of fees may be granted for applicants who do not meet these financial criteria, but who demonstrate other good cause for deferral.

G. Financial Eligibility for Waiver. The court shall grant a waiver if the court finds that the applicant is permanently unable to pay.

H. Deferral and Waivers Orders. If the applicant meets the criteria for deferral or waiver, orders for deferral or waiver may include all fees but at a minimum shall include those described in A.R.S. §12-302(H)(1)-(4). Deferrals or waivers described in A.R.S. §12-302(H)(5)-(8) may require additional applications if not deferred or waived at the time of the initial application.

I. County-Paid Fees.

1. Service of Process Fees. As provided in ARS §12-302(H)(5), the county shall pay sheriff, marshal, constable or law enforcement's service of process fees if the applicant meets the financial eligibility requirements for deferral or waiver, and any of the following apply:

(a) The applicant established by affidavit that the applicant has attempted without success to obtain voluntary acceptance of service of process.

(b) The applicant's attempt to obtain voluntary acceptance of service of process would be futile or dangerous.

(c) An order of protection or an injunction against harassment in favor of the applicant and against the party sought to be served exists and is enforceable.

2. **Service of Publication Fees.** As provided in A.R.S. §12-302(H) "an applicant who has been granted a deferral shall reimburse the court for the fees and costs in paragraphs 6 and 7 of this subsection." As provided in A.R.S. §12-302(H)(6), the county shall pay the "fee for service by publication if service is required by law and if the applicant establishes by affidavit specific facts to show that the applicant has exercised due diligence in attempting to locate the person to be served and has been unable to do so."

3. **Court Reporter's Fees.** As provided in A.R.S. §12-302(H), "an applicant who has been granted a deferral shall reimburse the court for the fees and costs in paragraphs 6 and 7 of this subsection." As provided in A.R.S. §12-302 (H)(7), the county shall pay the "court reporter's fees for the preparation of court transcripts if the court reporter is employed by the court."

J. Decision Review before the End of a Case. The applicant may ask the special commissioner to reconsider the decision to deny a deferral or waiver, if the applicant does not agree with the decision. After reconsideration, the applicant may request that a judge review the special commissioner's decision by filing a request for hearing within twenty days of the day the denial order was mailed or delivered to the applicant. The court shall schedule the review hearing as soon as reasonably possible.

K. Notice of Postponed Court Fees Due. The court shall notify the applicant if the applicant's payment of fees was postponed. The court shall send the notice as soon as practicable after entry of final judgment, order or decree by the trial court or by the appellate court mandate. The notice shall advise the applicant to pay postponed fees or file a supplemental application in accordance with A.R.S. §12-302(M) or the court may enter a judgment by consent. The notice shall also state the total amount of postponed fees due and the actual date that the balance is due. Payment is due thirty days after the notice is mailed or delivered to the applicant.

L. Supplemental Applications. At the conclusion of a case, an applicant may submit a supplemental application for either further deferral or waiver of court fees. The court shall issue a written order. The court shall establish a payment schedule if further deferral is granted. The court may enter a consent judgment unless exceptions of entry of consent judgment apply as described in A.R.S. §12-302(P)(2).

M. Waiver of Financial Eligibility at the Conclusion of a Case. To qualify for a waiver at the conclusion of a case, the applicant shall submit a supplemental application. The court may waive only previously postponed fees that remain unpaid. If the applicant does not qualify for a waiver when the supplemental application is made, the court may grant a further deferral for good cause shown.

N. Supplemental Application Decision Review; Collection Procedures. As provided in A.R.S. §12-302(F)(4), “the applicant may request a hearing within twenty days if the supplemental application is denied, or granted and a payment schedule set.” The court shall not institute collection procedures until the hearing is held.

O. Consent Judgment.

1. Entry of Consent Judgment. The court may enter a consent judgment against the applicant for all deferred fees that remain unpaid 30 days following the entry of final judgment unless one of the following conditions applies, as provided in A.R.S. §12-302(F):

1. The applicant has an established schedule of payment in effect and is current with payments.

2. A supplemental application for further deferral or waiver has been filed and is pending.

3. In response to a supplemental application, the court orders that the fees and costs be further deferred or waived.

4. Within twenty days of the date the court denies the supplemental application, the applicant either pays the fees or requests a hearing on the court’s final order denying further deferral or waiver. If the applicant requests a hearing, the court shall not enter the consent judgment unless a hearing is held, further deferral or waiver is denied and payment has not been made within the time prescribed by the court.

2. Impact of Appeal on Consent Judgment. The court shall not enter a consent judgment for unpaid deferred fees until 30 days after the appeals process is concluded.

3. Satisfaction of Consent Judgment. If a consent judgment is recorded and the applicant pays the fees in full, the court is required to comply with the provisions of A.R.S. §33-964(C):

A judgment of the justice court, municipal court, superior court or United States court which has become a lien under this article, shall, immediately on the payment or satisfaction of the judgment, be discharged of record by the judgment creditor or the judgment creditor's attorney by recording a satisfaction of judgment with the county recorder of the county in which the judgment is recorded. The judgment creditor or the judgment creditor's attorney shall enter a notation of satisfaction on the docket of the clerk of the superior court of each county where the judgment has been entered or docketed, and in a like manner enter a notation of satisfaction on the docket of the clerk of the United States district court.

P. Judgments Regarding Taxable Costs. The court shall include deferred court fees that remain unpaid and any expenses paid by the county in the judgment. The party who is assessed the fees shall pay them to the clerk of the court.

Q. Change in Financial Condition. As provided in A.R.S. §12-302(G):

An applicant who is granted a deferral or waiver, or a party to the action who knows of any change in the financial circumstances, shall promptly notify the court of the change in applicant's financial circumstances during the pendency of the case that affects the applicant's ability to pay court fees and costs. If, within ten days after notice and a hearing, the court determines that the applicant's financial circumstances have changed and that the applicant no longer meets the eligibility criteria of this section, the court shall order the applicant to pay the deferred or waived fees and costs.

The court may establish a payment schedule for good cause shown,. The court may inquire concerning the applicant's financial circumstances whenever the applicant appears in court in the case.

R. Judicial Discretion. As provided in A.R.S. §12-302(L), "this section does not limit the court's discretion in deferring, waiving or ordering the county to pay any fees and costs as may be necessary and appropriated." Examples of other necessary and appropriate fees include: multiple subpoenas or summonses, local law enforcement service of process fees, costs of a bond on appeal, and cost of a certified copy of child support history.

S. Cases Filed by Inmates.

1. ADOC Inmates. As provided by A.R.S. §12-302(E):

Except in cases of a dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support, and notwithstanding subsection A of this section or chapter 9, article 4 of this title, if the applicant is an inmate who is confined to a correctional facility operated by the state department of correction and who initiates a civil action or proceeding, the inmate is responsible for the full payment of actual court fees and costs. On filing a civil action or proceeding, the clerk of the court shall assess and, when monies exist, collect as a partial payment of any court fees and costs required by law a first time payment of twenty per cent. Thereafter, the state department of corrections shall withhold twenty per cent of all deposits into the prisoner's spendable account administered by the department until the actual court fees and costs are collected in full.

However, in cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support, inmates may use the application process

provided in this section.

2. **ADOC Inmates Awaiting Transportation to ADOC Facilities or Non-ADOC Inmates.** As provided in A.R.S. §12-302(K):

A waiver of court fees or costs shall not be granted for civil actions other than cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support that are filed by persons who at the time of filing the application are incarcerated as a result of a felony conviction in an out-of-state correctional facility or in a jail waiting to be transported to a state department of corrections facility.

These inmates are eligible to apply for deferrals.

- T. Cases Ineligible for Deferrals or Waivers.** As provided by A.R.S. §12-302(K):

A waiver of court fees or costs shall not be granted for:

1. Matters that are filed as class actions pursuant to rule 23 of the Arizona rules of civil procedure.
2. Civil actions other than cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support that are filed by persons who at the time of filing application are incarcerated as a result of a felony conviction in an out-of-state correctional facility or in a jail waiting to be transported to a state department of corrections facility.

- U. Nonpayment of Court Fees.** The court shall not withhold entry of final judgment for nonpayment of deferred court fees.

- V. Deferrals or Waivers for Cases on Appeal.** The lower court's deferral or waiver remains in effect unless there is a change in the applicant's financial circumstances if the case is appealed. The appellate court may require an applicant to submit a new application for a deferral or waiver.

- W. Fees Eligible for Exemption.** As provided in A.R.S. § 25-355, a person who demonstrates indigence by any of the criteria prescribed in A.R.S. §12-302 is exempt from the educational programs established in A.R.S. §25-352 .