WEST VIRGINIA CODE: §53-4A-4

§53-4A-4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.

(a) A petition filed under the provisions of this article may allege facts to show that the petitioner is unable to pay the costs of the proceeding or to employ counsel, may request permission to proceed in forma pauperis and may request the appointment of counsel. If the court to which the writ is returnable (hereinafter for convenience of reference referred to simply as "the court," unless the context in which used clearly indicates that some other court is intended) is satisfied that the facts alleged in this regard are true, and that the petition was filed in good faith, and has merit or is not frivolous, the court shall order that the petitioner proceed in forma pauperis, and the court shall appoint counsel for the petitioner. If it shall appear to the court that the record in the proceedings which resulted in the conviction and sentence, including, but not limited to, a transcript of the testimony therein, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, or all of such records, or any part or parts thereof, are necessary for a proper determination of the contention or contentions and grounds (in fact or law) advanced in the petition, the court shall, by order entered of record, direct the state to make arrangements for copies of any such record or records, or all of such records, or such part or parts thereof as may be sufficient, to be obtained for examination and review by the court, the state and the petitioner. The state may on its own initiative obtain copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for its use and for examination and review by the court and the petitioner. If, after judgment is entered under the provisions of this article, an appeal or writ of error is sought by the petitioner in accordance with the provisions of section nine of this article, and the court which rendered the judgment is of opinion that the review is being sought in good faith and the grounds assigned therefor have merit or are not frivolous, and such court finds that the petitioner is unable to pay the costs incident thereto or to employ counsel, the court shall, upon the petitioner's request, order that the petitioner proceed in forma pauperis and shall appoint counsel for the petitioner. If an appeal or writ of error is allowed, whether upon application of the petitioner or the state, the reviewing court shall, upon the requisite showing the request as aforesaid, order that the petitioner proceed in forma pauperis and shall appoint counsel for the petitioner. If it is determined that the petitioner has the financial means with which to pay the costs incident to any proceedings hereunder and to employ counsel, or that the petition was filed in bad faith or is without merit or is frivolous, or that review is being sought or prosecuted in bad faith or the grounds assigned therefor are without merit or are frivolous, the request to proceed in forma pauperis and for the appointment of counsel shall be denied and the court making such determination shall enter an order setting forth the findings pertaining thereto and such order shall be final.

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(b) Whenever it is determined that a petitioner shall proceed in forma pauperis, all necessary costs and expenses incident to proceedings hereunder, originally, or on appeal pursuant to section nine of this article, or both, including, but not limited to, all court costs, and the cost of furnishing transcripts, shall, upon certification by the court to the State Auditor, be paid out of the treasury of the state from the appropriation for criminal charges. Any attorney appointed in accordance with the provisions of this section shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty- nine of the code. All costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the petitioner is proceeding in forma pauperis, and the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be paid out of the treasury of the state, upon certification by the court to the State Auditor, from the appropriation for criminal charges. All such costs, expenses and fees shall be paid as provided in this subsection (b) notwithstanding the fact that all proceedings under the provisions of this article are civil and not criminal in character. In the event a petitioner who is proceeding in forma pauperis does not substantially prevail, all such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs.

(c) In the event a petitioner who is not proceeding in forma pauperis does not substantially prevail, all costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs. In any case where the petitioner does not proceed in forma pauperis, the court shall adjudge all costs and expenses to be paid as shall seem to the court to be right, consistent with the immediately preceding sentence of this subsection (c) and with the provisions of chapter fifty-nine of this code, as amended.

WV Legislature