# WEST VIRGINIA CODE: §59-2-1

**§59-2-1. Suits by persons financially unable to pay.**

(a) A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

(1) The clerk of the court and all other officers of the court shall issue and serve all process and perform all duties in such cases.

(2) Judgment may be rendered for costs at the conclusion of the action, where otherwise authorized by law, and be taxable against a losing party who has not been determined to be financially unable to pay.

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the Supreme Court of Appeals, the Supreme Court of Appeals may direct payment by the administrative office of the Supreme Court of Appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Provided, That actual expenses of the court reporter for supplies used in preparing the transcript may be paid when authorized by the director of the administrative office of the Supreme Court of Appeals.

(b) The Supreme Court of Appeals or the chief justice thereof shall establish and periodically review and update financial guidelines for determining the eligibility of civil litigants to proceed in forma pauperis.

(c) The Supreme Court of Appeals shall adopt a financial affidavit form for use by persons seeking a waiver of fees, costs or security pursuant to the provisions of this section. Copies of the form shall be available to the public in the offices of the clerk of any court of this state. The affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or she is entitled to redress. The form shall elicit information from the affiant which will enable the court in which it is filed to consider the following factors in determining whether the affiant is financially unable to pay fees, costs or security:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay fees, costs or security;

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(3) Fixed debts and obligations, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person has paid or will pay counsel fees, or whether counsel will be provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services attorney, or some other attorney at no cost or a reduced cost to the affiant; and

(7) The consequences for the individual if a waiver of fees, costs or security is denied.

(d) When the information set forth in the affidavit or the evidence submitted in the action reveals that the person filing the affidavit is financially able to pay the fees and costs, the court or the family law master shall order the person to pay the fees and costs in the action.

(e) No other party in any proceeding may initiate an inquiry by motion or other pleading or participate in any proceeding relevant to the issues raised pursuant to this section.

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

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