

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 sections 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).

"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.

"Vexatious conduct" as provided in A.R.S. § 12-3201(E), means:

1. "Vexatious conduct" includes any of the following:
 - (a) Repeated filing of court actions solely or primarily for the purpose of harassment.
 - (b) Unreasonably expanding or delaying court proceedings.
 - (c) Court actions brought or defended without substantial justification.
 - (d) Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.
 - (e) A pattern of making unreasonable, repetitive and excessive requests for information.
 - (f) Repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation.

"Vexatious litigant" means a pro se litigant whom the court finds to have engaged in vexatious conduct.

“Waiver” means the court has determined that 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 but that remain unpaid after thirty calendar days following the entry of final judgment or order.

3. The fee is subject to deferral or waiver as appropriate. At the commencement of each action or each postadjudication proceeding, the party filing the initial petition and any responding parties that request a deferral or waiver shall be assessed the statutory minimum clerk fee. The statutory minimum clerk fee shall be assessed only for the initial application of each party and is subject to deferral and waiver.

E. Deferral.

1. Postponement. Under the following circumstances, the court shall grant an application for deferral and shall postpone all payments until the conclusion of the case.

a. As provided in A.R.S. § 12-302(C):

[I]f 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).

....

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 one hundred fifty per cent or less 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.

(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 one hundred fifty per cent of the current poverty level established by the United States department of health and human services.

b. If the applicant presents an affidavit showing representation by a non-profit legal services organization that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters.

c. The applicant's income is 150% or less of the current U.S. Poverty Guidelines as established by the U.S. Department of Health and Human Services.

2. **Payment.** The court shall grant or deny a deferral or order payment as follows:
 - a. The applicant's income is greater than 150%, but less than 175%, of the current U.S. Poverty Guidelines. A monthly payment will be due from the applicant as determined by the court based on the applicant's ability to pay.
 - b. The applicant's income is greater than 175%, but less than 225% of the current U.S. Poverty Guidelines. Payment of no less than 25% of the filing fee is due at the time of filing. The balance due will be paid on a payment schedule over a period of time as ordered by the court.
3. **Ineligibility.** If the applicant's income is greater than 225% of the current U.S. Poverty Guidelines, payment of the entire fee is due at the time of filing unless the court finds good cause to postpone, defer, or waive the fee.
4. **Voluntary Payment.** An applicant who has qualified for a deferral or waiver may voluntarily elect a payment plan that exceeds the minimum payment required by the code.
5. **Good Cause.** As provided in A.R.S. § 12-302(A):
 - A. The court or any judge may for good cause shown extend the time for paying any court fees and costs required by law or may relieve against a default caused by nonpayment of a fee within the time provided by law, but no fees paid shall be refunded.

F. Waiver. The court shall grant a waiver:

1. If the court finds that the applicant is permanently unable to pay or if the applicant establishes by affidavit, including supporting documentation, that the applicant is receiving benefits pursuant to the supplemental security income program (42 U.S.C. §§ 1381 through 1385) and the applicant presents an eligibility letter or notice of award at the time the applicant seeks the waiver.
2. If the applicant was granted a deferral as provided in subsection E(1)(a) and the court determines the applicant's income and liquid assets have not changed and are unlikely to change in the foreseeable future.

G. 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 provided in A.R.S. § 12-302(H)(1)-(4). Deferrals or waivers for services provided in A.R.S. § 12-302(H)(5)-(8) may require separate applications if not deferred or waived at the time of the initial application.

H. County-Paid Fees.

1. Service of process fees. As provided in A.R.S. § 12-302(H)(5), the county shall pay sheriff, marshal, constable or law enforcement fees for service of process, 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 by publication and court reporter fees. As provided in A.R.S. § 12-302(H)(6)&(7) the county shall pay the fees and costs for service by publication when required by law and for the preparation of the court reporter's transcript, if the court reporter is employed by the court, upon granting a deferral or waiver. An applicant granted a deferral shall reimburse the county for these fees and costs.

I. Review of Special Commissioner's Decision. The applicant may ask the special commissioner to reconsider a decision to deny a deferral or waiver. After reconsideration by the special commissioner, 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.

J. Notice of Deferred Court Fees and Costs Due on Entry of Judgment or Final Order. As provided in A.R.S. § 12-302(F), all outstanding fees and costs must be paid within thirty days following the entry of final judgment or order. On entry of judgment, decree, final order or mandate of the appellate court, the court shall send the applicant notice of any costs or fees due. The notice shall advise the applicant of the date the payment is due and instructions on how to file a supplemental application for further deferral or waiver of court fees and costs. The notice shall advise the applicant that if no application is filed the court may enter a judgment by consent.

K. Supplemental Applications. At the conclusion of a case, an applicant may submit a supplemental application for either further deferral or waiver of court fees and costs. If waiver is granted, the court shall waive only those previously postponed fees that remain unpaid. If further deferral is granted, the court shall establish a payment schedule. If the court denies the application, the court may enter a consent judgment unless, in accordance with A.R.S. § 12-302(F), an exception to entry of consent judgment applies.

L. Supplemental Application Decision Review; Collection Procedures; Hearing. 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.

M. 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 the court records a consent judgment and the applicant later pays the outstanding fees in full, the court shall 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 that has become a lien under this article, immediately on the payment or satisfaction of the judgment, shall 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 in which 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.

N. 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.

O. 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 of the applicant shall promptly notify the court of the change in the applicant's financial circumstances during the pendency of the action 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 requirements 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 as to the applicant's financial circumstances whenever the applicant appears in court in the case.

P. 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 appropriate." 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.

Q. Vexatious Litigants.

1. Postponement. The court may grant a vexatious litigant's application for fee deferral if the court approves the filing of a new pleading, motion or other document, and the litigant meets the eligibility requirements of this code.
2. Waiver. As provided in A.R.S. § 12-302(K)((3), the court shall not grant a waiver of court fees or costs in "[c]ivil actions other than cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support filed by a pro se litigant who has been previously declared a vexatious litigant by any court."
3. Determination Pending Completion of Litigation. As provided by A.R.S. § 12-302(M), "[i]f an applicant who is granted a deferral or waiver is found to be a vexatious litigant by any court during the pendency of the action, the court shall order the applicant to pay the deferred or waived fees and costs."

R. Cases Filed by Inmates.

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

Except in cases of 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 the 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, these 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)(2) 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.

- S. Cases Ineligible for Waiver.** As provided by A.R.S. § 12-302(K), in addition to specified cases filed by inmates, class actions filed pursuant to Rule 23 of the Rules of Civil Procedure are not eligible for a waiver of court fees or costs.

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

- U. 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.

V. Other Fees Eligible for Deferral or Waiver. 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 eligible for deferral or waiver of the prescribed fee to attend the educational program required by the court.

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