



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: December 20, 2018

TO: Judges
County Clerks

cc: Court Administrators
Probate Registers

FROM: Stephanie Beyersdorf, Management Analyst

RE: Amendments to MCR 2.002 Waiver of Fees for Indigent Persons

On December 3, 2018, the Michigan Supreme Court adopted amendments to MCR 2.002¹. These amendments will go into effect on January 1, 2019, and will change how fee waiver requests are processed and decided in Michigan courts. The adopted changes specify which fees may be waived by the courts, including which are automatically waived. It expands the definition of indigence and provides an income standard for determination. The amended rule also includes a de novo review procedure for individuals whose requests are denied. Sections of the rule that describe fee waivers in domestic relations actions or payment of service fees and publication costs are largely unchanged.

Filing Fees Defined

The new language clarifies that only an individual, not an organization, is eligible to request and receive a fee waiver. The rule lists the filing fees² that may be waived by statute and specifies that a fee waiver must be filed in every case for which a waiver is requested by a party, even if he or she has multiple cases. If a party files an appeal of a final judgment or order, a new waiver of fees request must be filed with the appellate court.

Automatic Fee Waiver; Public Assistance Program or Representation by a Legal Services Program

The rule provides for automatic waiver of fees under specific conditions and requires that the clerk of the court certify (approve) the fee waivers in those situations on a form approved by the State Court Administrative Office (SCAO). The clerk approval is combined with the SCAO-approved Fee Waiver Request (form MC 20). The specific conditions are that the individual is a recipient of a means-tested public assistance program or the individual is represented by a legal services program that is a grantee

¹ [Administrative Order 2002-37/2018-20](#) Amendment of MCR 2.002

² Filing fees that may be waived by the court are those fees listed in [MCL 600.857](#), [MCL 600.880](#), [MCL 600.880a](#), [MCL 600.880b](#), [MCL 600.880c](#), [MCL 600.1027](#), [MCL 600.1986](#), [MCL 600.2529](#), [MCL 600.5756](#), [MCL 600.8371](#), [MCL 600.8420](#), [MCL 700.2517](#), [MCL 700.5104](#), and [MCL 722.717](#).

of the federal Legal Services Corporation or the Michigan State Bar Foundation, or by a law school clinic that provides services on the basis of indigence. MCR 2.002(C) lists several public assistance programs³; however, the list should not be construed as exhaustive. The clerk must date and sign the form if the filer has completed the public assistance or legal services section of the form.

Fee Waiver Based on Other Indigence

MCR 2.002(E) maintains the waiver of fees based on indigence. If an individual does not receive public assistance but requests a fee waiver because he or she is otherwise indigent, a judge must determine if the person meets the criteria prescribed. Included in the rule for the first time is an income threshold. For the purposes of MCR 2.002, indigence is defined as living in a household whose gross income under 125 percent⁴ of the federal poverty level⁵. The judge may take into account all of the information provided on the Fee Waiver Request (form MC 20) and has three business days to decide the request. An order granting or denying the request must be sent to the individual. The order is combined with the SCAO-approved Fee Waiver Request (form MC 20).

Denial of Fee Waiver Request and De Novo Hearing

An order denying the request must be provided to the individual and state the reason why the request was denied. If a fee waiver request is denied, the filer will have 14 days to pay the filing fee or the filing will be rejected. Alternatively, the individual could request a de novo hearing. The hearing must be requested within 14 days of the entry of the order; the request automatically stays the case and preserves the filing date until the review is decided. The de novo hearing must be conducted within 14 days of receiving the request and must be closed and held on the record.

The rule provides guidelines as to notice and procedures for conducting the hearing. The individual must bring documents to verify the information provided in the fee waiver request. The chief judge of the court must conduct the de novo review unless the court is a single-judge court or if the chief judge was the judge that issued the order denying the waiver request. In those instances, the judge must refer the request to their SCAO regional administrator, who will assign another judge to decide the request for de novo review. The court must enter an order on the de novo review and include its reasoning if the request is denied.

Review of Fee Waiver Requests

There is a review procedure prescribed in the rule if the court determines that there is not enough information to make a determination. The court may request more information than what is included on the Fee Waiver Request (form MC 20) only in instances where the court finds that a request is incomplete or has a reasonable belief that a request is inaccurate. Any hearing must be conducted on the record and the notice of the hearing must include the specific issues that are subject to further inquiry.

Reinstatement of Requirement to Pay

Under MCR 2.002(F), the individual is required to notify the court if their circumstances change or the reason for the fee waiver no longer exists. The court may reinstate fees on its own initiative if the

³ The list includes but is not limited to: (1) Food Assistance Program through the State of Michigan; (2) Medicaid; (3) Financial Independence Program through the State of Michigan; (4) Women, Infants, and Children benefits; (5) Supplemental Security Income through the federal government; or (6) Any other federal, state, or locally administered means-tested income or benefit.

⁴ This reflects the standard set for foreign language interpreters in [MCR 1.111\(A\)\(3\)\(a\)](#).

⁵ <https://www.census.gov/topics/income-poverty/poverty/guidance.html>.

court finds that the individual's circumstances have changed upon a finding of fact [MCR 2.002(I)]. If the court orders that the individual must pay fees, the court must not delay the entry of order or judgments or delay the case pending the payment of fees.

Fee Waiver Request (SCAO-approved Form [MC 20](#))

SCAO-approved form MC 20 has been revised to reflect the amendments to MCR 2.002. Under MCR 2.002(B), as amended, only the SCAO-approved Fee Waiver Request (form MC 20) may be required by a court to process a fee waiver request. No other information or documents may be required with the filing of the request. The form contains a list of public assistance programs for the filer to check and a blank line to write their public assistance case number, or a blank line to write the legal service program they receive benefits from. There is a section for the filer to complete if they are requesting the waiver due to indigence. The section requires certain financial information be disclosed for the court to determine the filer's indigence. The filer signs under penalty of perjury that the information provided is true. There are lines for the date and signature of the court clerk at the bottom of the form when items 1 and 2 are checked. The second page of the form contains an order for the judge to grant or deny the request when item 3 is checked, including space to provide reasons for denial.

Notice of Denied Fee Waiver and Request for De Novo Review (SCAO-approved Form [MC 114](#))

When the court denies a fee waiver request, the clerk of the court is required to send a notice of right to request a de novo hearing. The order denying contains language notifying the filer they have 14 days from the date of entry of the order to pay the filing fees or request a review. The clerk does not have to send a separate notice form. The order denying also references SCAO-approved form MC 114, which is designed for use by the individual to request a de novo hearing under MCR 2.002(F)(1).

If you have questions regarding procedure, please contact me at TrialCourtServices@courts.mi.gov or 517-373-0122. If you have questions regarding forms, please contact Matthew Walker at TrialCourtServices@courts.mi.gov or 517-373-2217.