

SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE
Costs for Indigent Persons in Civil Matters

I. Statutory Authority

Section 13-16-103 C.R.S. provides for an indigent person to prosecute or to defend in a court proceeding without the payment of costs, at the discretion of the judge. In the event that the indigent person successfully prosecutes or defends an action or proceeding, a judgment shall be entered in favor of the indigent person for court costs. If these costs are collected by the indigent person, that person shall pay the court in the amount of court costs which were waived.

II. Indigency Determination

A petitioner or plaintiff or a respondent or defendant in a civil case must be indigent to proceed in a court action without the payment of costs. Indigency should be determined by using the attached procedures.

III. Costs That May Not Be Waived

Any obligation for payment to a person or entity other than the State of Colorado, which arises in the course of prosecuting or defending a civil action or special proceeding is not one which can be waived on the basis of a party's indigency. Waiver of costs is limited to those fees and expenses owed to the state and does not apply to fees and expenses owed to other persons or entities. Therefore, transcript fees, witness fees, and process server fees cannot be waived by the court. As set forth in Section 13-16-124 C.R.S., if the party delivers the documents for service of process to the sheriff, the court cannot waive the sheriff's fee. The sheriff must make that determination.

IV. Costs That May Be Waived

If the court determines the person to be indigent, any costs owed to the state may be waived. Such costs would include filing fees, reasonable copy fees, jury fees, E-file and E-service fees, and research fees. If the court delivers the documents for service of process to the sheriff, the court can waive the sheriff's fee and pay such fees from mandated costs.

V. Installment Payment Procedure

A petitioner or plaintiff or a respondent or defendant in a civil case determined not to be indigent may proceed to pay the filing fee in installments unless otherwise ordered by the court. **If payment is not received in accordance with the schedule set by the court, the court may dismiss the filer's claims or the entire case, without further notice.**

VI. Dispute Resolution Fees

Fees owed in relation to dispute resolution services are an obligation to another person or entity and so cannot be waived; however if the party is found to be indigent and there are available funds to pay the fees, fees may be reduced. If the Office of Dispute Resolution (ODR) funds are available, the funds may be used to assist with payment for ODR services in accordance with the attached procedures.

**PROCEDURES FOR THE WAIVER OF COURT COSTS IN CIVIL CASES ON THE
BASIS OF INDIGENCY**

As set forth in CJD 98-01, Section II., all persons requesting waiver of court costs in civil actions or proceedings on the basis of indigency must follow the following procedures:

1. Procedures for the Determination of Indigency by Court Staff or Legal Service Provider

a. Process for Evaluating Indigency

The following procedures are used for applicants in cases addressed in CJD 98-01 where the applicant is not represented by an attorney or the applicant is represented by an attorney of or obtained through a bar association or Access to Justice Committee-sponsored program; a law school; or an organized, non-profit entity, such as Legal Services Corporation, Metro Volunteer Lawyers, or Colorado Lawyers Committee, whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons, as described in C.R.C.P. 250.9 (Legal Service Provider).

i. Without Completion of JDF 205, Presentation of Proof of Current Qualification or Receipt of the Following Benefits:

1. Aid to the Blind Colorado Supplement
2. Aid to the Needy and Disabled (AND)
3. Supplemental Security Income (SSI)
4. Old Age Pension - A and B

ii. Completion of JDF 205 form by Applicant: Filing Fee

Persons requesting waiver of court costs must complete, or have completed on their behalf, the Motion to File Without Payment and Supporting Financial Affidavit, form JDF 205, and submit it to the court or to the Legal Service Provider.

iii. Completion of JDF 211 form by Applicant: ODR fees

Persons requesting reduction of fees for ODR services must complete, or have completed on their behalf, the Request to Reduce Payment for Office of Dispute Resolution Services, form JDF 211, and submit it to the court, or ODR staff as directed; except that if an indigency Order has been made using JDF 206 within six (6) months of the ODR scheduled service, then such order shall determine indigency for ODR services and JDF 211 does not need to be completed.

iv. Review of Financial Information by Court Staff or Legal Service Provider

Court staff or Legal Service Provider reviews the applicant's information on form JDF 205 and supporting documentation if requested to determine whether the applicant is indigent on the basis of three factors:

- Income*
- Liquid assets**
- Expenses***

v. Filing of Order for Indigent Persons Not Represented through a Legal Service Provider

Once indigency status is determined for a person not represented through a Legal Service Provider, court staff completes Finding and Order Concerning Payment of Costs, form JDF 206.

vi. Filing of Notice for Indigent Persons Represented by an Attorney of or Obtained Through a Legal Service Provider

Once indigency status is determined by the Legal Service Provider, the Provider completes JDF Form 203, which the attorney representing the indigent person files in the case with the court by e-filing or other authorized filing method. Upon filing of form JDF 203, the waivable costs are waived. The Legal Service Provider shall maintain the completed JDF 205 form for a period of three years following conclusion of the case or representation of the client, whichever is the later date. The State Court Administrator's Office may request to view any such records, and such request may not be refused.

b. Criteria for Indigency

An applicant qualifies for waiver of court costs in civil cases if his or her financial circumstances meet a set of criteria described below.

i. Without Completion of JDF 205, Presentation of Proof of Current Qualification or Receipt of the Following Benefits:

1. Aid to the Blind Colorado Supplement
2. Aid to the Needy and Disabled (AND)
3. Supplemental Security Income (SSI)
4. Old Age Pension - A and B

ii. Income is at or below guidelines / Liquid assets equal \$0 to \$1,500

If the applicant's income is at or below the income eligibility guidelines (see the "Monthly Income Guideline" and "Yearly Income Guideline" columns in the chart on the following page) and he or she has liquid assets of \$1,500 or less, as determined on form JDF 205, the applicant is indigent and eligible for waiver of court costs in civil cases.

iii. Income is up to 25% above guidelines / Liquid assets equal \$0 to \$1,500 / Monthly expenses equal or exceed monthly income

If the applicant's income is up to 25% above the income eligibility guidelines (see the "Monthly Income Guideline plus 25%" and "Yearly Income Guideline plus 25%" columns in the chart on the following page); the applicant has assets of \$1,500 or less; and the applicant's monthly expenses equal or exceed monthly income, as determined on form JDF 205, the applicant is indigent and eligible for waiver of court costs.

2. Procedures for the Determination of Indigency When Applicant is Represented by an Attorney of an agency funded by the Legal Services Corporation pursuant to 45 C.F.R., Chapter XVI.

Process for Evaluating Indigency

Legal Services Corporation is a federally funded program for representation of indigent persons. The Code of Federal Regulations determines how applications for representation by attorneys employed by the agencies funded by the Legal Services Corporation shall be filed, reviewed, maintained, and when an applicant is deemed indigent for the purposes of representation. Because that review already takes place in order to determine eligibility for representation, and because the Legal Services Corporation may not represent someone in court who has not been deemed indigent under the Code of Federal Regulations, a further application for indigency for the purpose of waiving the filing fee under §13-16-103, C.R.S. is not necessary.

An attorney employed by an agency funded by the Legal Services Corporation or obtained through such an agency may file form JDF 203 certified by that agency. That agency shall maintain its completed determination of indigency documentation for a period of three years following conclusion of the case or representation of the client, whichever is the later date, for which waiver of court costs is obtained under these provisions. The State Court Administrator's Office may request to view any such records, and such request may not be refused.

3. Court procedures upon receipt of JDF 206 or JDF 203

- a. When the court receives a JDF 206 form completed by court staff, the court enters an order concerning the applicant's payment of fees.
 - i. **In cases in which the criteria in 1.b. are not met but the court finds the applicant can pay in installments, the court may order a payment plan.**
 - ii. **In cases in which the criteria in 1.b. are not met and extraordinary circumstances exist, the court may find the applicant indigent and waive the payment of fees. In such cases, the court shall enter a written order setting forth the reasons for the finding of indigency.**

- b. Upon filing by an attorney for an indigent person of a JDF 203 form certified by a Legal Service Provider or an agency funded by the Legal Services Corporation, the clerk of the court in which the case is filed is authorized and directed to allow the applicant to proceed in forma pauperis in court proceedings without any additional court order. **The clerk of the court may refer any notice filed by an attorney appointed by a Legal Service Provider or an agency funded by the Legal Services Corporation to a judge of the court in which the matter is pending if there is a question about the eligibility of the applicant.**

4. Processing of JDF 211

- a. Requests for reduced dispute resolution fees through the Office of Dispute Resolution shall be in made accordance with the instructions set forth at the website: www.coloradoODR.org
- b. Requests for reduced dispute resolution fees processed through the local courts shall be made in accordance with that court's procedures.

5. Appeals from Civil Cases

A standard application and motion to proceed in forma pauperis with verification of eligibility will be required to waive costs to file an appeal of a civil case.

* *Income* is gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include wages, salary, commissions, profits, interest/investment earnings, social security benefits (including disability), Supplemental Security Income (SSI) Aid to the Blind Colorado Supplement, Aid to the Needy and Disabled (AND), Old Age Pension - A and B, maintenance (alimony), pension, workers' compensation, and unemployment benefits. NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income. Gross income does not include TANF payments, food stamps, subsidized housing assistance, veteran's benefits or child support.

***Liquid assets* include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.

****Expenses* for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall not be included. Allowable expense categories are listed on form JDF 205.

INCOME ELIGIBILITY GUIDELINES (amended February 1, 2022)

Family Size	Poverty Guideline	Monthly Poverty Level	Monthly Income*	Monthly Income plus 25%	Yearly Income*	Yearly Income plus 25%
1	\$13,590	\$1,133	\$1,416	\$1,770	\$16,988	\$21,234
2	\$18,310	\$1,526	\$1,907	\$2,384	\$22,888	\$28,609
3	\$23,030	\$1,919	\$2,399	\$2,999	\$28,788	\$35,984
4	\$27,750	\$2,313	\$2,891	\$3,613	\$34,688	\$43,359
5	\$32,470	\$2,706	\$3,382	\$4,228	\$40,588	\$50,734
6	\$37,190	\$3,099	\$3,874	\$4,842	\$46,488	\$58,109
7	\$41,910	\$3,493	\$4,366	\$5,457	\$52,388	\$65,484
8	\$46,630	\$3,886	\$4,857	\$6,072	\$58,288	\$72,859

* 125% of poverty level as determined by the Department of Health and Human Services.

*For family units with more than eight members, add \$492 per month to "monthly income" or \$5,900 per year to "yearly income" for each additional family member.

Source: Federal Register (87 FR 3315, 02/01/2022)

from CJD 98-01
 Attachment A updated Mar 22