

REFERENCE TITLE: court fees; costs; deferral; waiver

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1008

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTION 12-302, ARIZONA REVISED STATUTES; RELATING TO COURT FEES
AND COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-302, Arizona Revised Statutes, is amended to
3 read:

4 12-302. Extension of time for payment of fees and costs;
5 relief from default for nonpayment; deferral or
6 waiver of court fees and costs; definitions

7 A. The court or any judge may for good cause shown extend the time
8 for paying any court fees and costs required by law or may relieve against
9 a default caused by nonpayment of a fee within the time provided by law,
10 but no fees paid shall be refunded.

11 B. The supreme court shall adopt forms and procedures for deferral
12 or waiver of court fees and costs.

13 C. Except as provided in subsection ~~E~~ F of this section, the court
14 shall grant an application for deferral of court fees and costs if the
15 applicant establishes by affidavit, ~~including supporting documentation,~~
16 that the applicant ~~either:~~

17 ~~1. Is receiving benefits pursuant to one or more of the following~~
18 ~~programs:~~

19 ~~(a) The temporary assistance for needy families program established~~
20 ~~by section 403 of title 4 of the social security act as it exists after~~
21 ~~August 21, 1996.~~

22 ~~(b) The food stamp program (7 United States Code sections 2011~~
23 ~~through 2029).~~

24 ~~2. Is receiving benefits pursuant to the supplemental security~~
25 ~~income program (42 United States Code sections 1381 through 1385).~~

26 ~~3.~~ Has an income that is insufficient or barely sufficient to meet
27 the daily essentials of life and that includes no allotment that could be
28 budgeted for the fees and costs that are required to gain access to the
29 court. In considering insufficient income pursuant to this ~~paragraph~~
30 ~~SUBSECTION~~, the court may consider the following as evidence of
31 insufficient income:

32 ~~(a)~~ 1. The applicant has a gross income that as computed on a
33 monthly basis is ~~one hundred fifty~~ TWO HUNDRED TWENTY-FIVE percent or less
34 of the current poverty level established by the United States department
35 of health and human services. Gross monthly income includes the
36 applicant's share of community property income.

37 ~~(b)~~ 2. The applicant's income is considered to be sufficient, but
38 the applicant provides proof of extraordinary expenses, including medical
39 expenses, costs of care for elderly family members or family members with
40 disabilities or other expenses that are deemed extraordinary, that reduce
41 the applicant's gross monthly income to at or below ~~one hundred fifty~~ TWO
42 HUNDRED TWENTY-FIVE percent of the current poverty level established by
43 the United States department of health and human services.

44 D. ON RECEIVING AN APPLICATION FOR DEFERRAL, THE COURT SHALL REVIEW
45 THE APPLICATION AND MAKE A DETERMINATION BASED ON THE INFORMATION PROVIDED

1 WHETHER COURT FEES AND COSTS SHOULD BE WAIVED. THE COURT MAY WAIVE COURT
2 FEES AND COSTS ENTIRELY OR IN PART. THE COURT SHALL WAIVE COURT FEES AND
3 COSTS IF THE APPLICANT ESTABLISHES BY AFFIDAVIT OR PROVIDES SUPPORTING
4 DOCUMENTATION THAT THE APPLICANT IS RECEIVING BENEFITS FROM ONE OR MORE OF
5 THE FOLLOWING:

6 1. THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM ESTABLISHED
7 BY SECTION 403 OF TITLE IV OF THE SOCIAL SECURITY ACT AS IT EXISTS AFTER
8 AUGUST 21, 1996.

9 2. THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (7 UNITED STATES
10 CODE SECTIONS 2011 THROUGH 2036d).

11 3. THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,
12 AND CHILDREN (42 UNITED STATES CODE SECTION 1786).

13 4. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

14 5. THE SUPPLEMENTAL SECURITY INCOME PROGRAM (42 UNITED STATES CODE
15 SECTIONS 1381 THROUGH 1383f).

16 ~~D.~~ E. On proof that the applicant is permanently unable to pay
17 fees or costs, the court shall waive them. For the purposes of this
18 subsection, "permanently unable to pay" means the applicant's income and
19 liquid assets are insufficient or barely sufficient to meet the daily
20 essentials of life and the income and liquid assets are unlikely to change
21 in the foreseeable future.

22 ~~E.~~ F. Except in cases of dissolution of marriage, legal
23 separation, annulment or establishment, enforcement or modification of
24 child support, and notwithstanding subsection A of this section or chapter
25 9, article 4 of this title, if the applicant is an inmate who is confined
26 to a correctional facility operated by the state department of corrections
27 and who initiates a civil action or proceeding, the inmate is responsible
28 for the full payment of actual court fees and costs. On filing the civil
29 action or proceeding, the clerk of the court shall assess and, when monies
30 exist, collect as a partial payment of any court fees and costs required
31 by law a first time payment of twenty percent. Thereafter the state
32 department of corrections shall withhold twenty percent of all deposits
33 into the prisoner's spendable account administered by the department until
34 the actual court fees and costs are collected in full. The state
35 department of corrections shall annually forward any monies withheld to
36 the clerk of the court of each court of jurisdiction before January
37 31. If a prisoner is released before the full fees and costs are
38 collected, the state department of corrections shall forward the amount of
39 fees and costs collected through the date of the prisoner's release. The
40 clerk of the court of each court of jurisdiction is responsible for
41 sending the state department of corrections a copy of the order mandating
42 the amount of fees and costs to be paid. This subsection does not
43 prohibit an applicant from filing a civil action or proceeding if the
44 applicant is unable to pay the filing fees.

1 ~~F.~~ G. At the time an applicant signs and submits the application
2 for deferral to the court, the applicant shall acknowledge under oath and
3 sign a consent to judgment. By signing the consent to judgment, the
4 applicant consents to judgment being entered against the applicant for all
5 fees and costs that are deferred but that remain unpaid after thirty
6 calendar days following the entry of final judgment or order. A consent
7 judgment may be entered against the applicant unless one of the following
8 applies:

9 1. The applicant has an established schedule of payment in effect
10 and is current with payments.

11 2. A supplemental application for further deferral or waiver has
12 been filed and is pending.

13 3. In response to a supplemental application, the court orders that
14 the fees and costs be further deferred or waived.

15 4. Within twenty days of the date the court denies the supplemental
16 application, the applicant either pays the fees or requests a hearing on
17 the court's final order denying further deferral or waiver. If the
18 applicant requests a hearing, the court shall not enter a consent judgment
19 unless a hearing is held, further deferral or waiver is denied and payment
20 has not been made within the time prescribed by the court.

21 ~~G.~~ H. An applicant who is granted a deferral or waiver or a party
22 to the action who knows of any change in the financial circumstances of
23 the applicant shall promptly notify the court of the change in the
24 applicant's financial circumstances during the pendency of the action that
25 affects the applicant's ability to pay court fees and costs. If within
26 ten days after notice and a hearing the court determines that the
27 applicant's financial circumstances have changed and that the applicant no
28 longer meets the eligibility requirements of this section, the court shall
29 order the applicant to pay the deferred or waived fees and costs.

30 ~~H.~~ I. The following court fees and costs may be deferred or
31 waived, except that the county shall pay the fees and costs in paragraphs
32 6 and 7 of this subsection on the granting of an application for deferral
33 or waiver and an applicant who has been granted a deferral shall reimburse
34 the county for the fees and costs in paragraphs 6 and 7 of this
35 subsection:

36 1. Filing fees.

37 2. Fees for ~~issuance of~~ ISSUING either a summons or subpoena.

38 3. Fees for obtaining one certified copy of a temporary order in a
39 domestic relations case.

40 4. Fees for obtaining one certified copy of a final order, judgment
41 or decree in all civil proceedings.

42 5. Sheriff, marshal, constable and law enforcement fees for service
43 of process if any of the following applies:

1 (a) The applicant established by affidavit that the applicant has
2 attempted without success to obtain voluntary acceptance of service of
3 process.

4 (b) The applicant's attempt to obtain voluntary acceptance of
5 service of process would be futile or dangerous.

6 (c) An order of protection or an injunction against harassment in
7 favor of the applicant and against the party sought to be served exists
8 and is enforceable.

9 6. The fee for service by publication if service is required by law
10 and if the applicant establishes by affidavit specific facts to show that
11 the applicant has exercised due diligence in attempting to locate the
12 person to be served and has been unable to do so.

13 7. Court reporter's fees for ~~the preparation of~~ PREPARING court
14 transcripts if the court reporter is employed by the court.

15 8. Appeal preparation and filing fees at all levels of appeal and
16 photocopy fees for ~~the preparation of~~ PREPARING the record on appeal
17 pursuant to sections 12-119.01, 12-120.31 and 12-2107 and section 12-284,
18 subsection A.

19 ~~I.~~ J. If the case is appealed, the initial deferral or waiver
20 remains in effect unless there is a change in the applicant's financial
21 circumstances. If a case is appealed an applicant may be required to
22 submit to the appellate court a new application for a deferral or waiver
23 of the court fees and costs.

24 ~~J.~~ K. If a judgment is rendered for court fees and costs, the
25 court fees and costs deferred but unpaid and the expenses paid by the
26 county under this section shall be included in the judgment and shall be
27 paid directly to the clerk of the court by the party against whom the
28 court fees and costs were assessed.

29 ~~K.~~ L. A waiver of court fees or costs shall not be granted for:

30 1. Matters that are filed as class actions pursuant to rule 23 of
31 the Arizona rules of civil procedure.

32 2. Civil actions other than cases of dissolution of marriage, legal
33 separation, annulment or establishment, enforcement or modification of
34 child support that are filed by persons who at the time of filing the
35 application are incarcerated as a result of a felony conviction in an
36 out-of-state correctional facility or in a jail waiting to be transported
37 to a state department of corrections facility.

38 3. Civil actions other than cases of dissolution of marriage, legal
39 separation, annulment or establishment, enforcement or modification of
40 child support THAT ARE filed by a pro se litigant who has been previously
41 declared a vexatious litigant by any court.

42 ~~L.~~ M. This section does not limit the court's discretion in
43 deferring, waiving or ordering the county to pay any fees and costs as may
44 be necessary and appropriate.

1 ~~M.~~ N. If an applicant who is granted a deferral or waiver is found
2 to be a vexatious litigant by any court during the pendency of the action,
3 the court shall order the applicant to pay the deferred or waived fees and
4 costs.

5 ~~N.~~ O. For the purposes of this section:

6 1. "Deferral" means either postponement of an obligation to pay
7 fees or establishment of a schedule for payment of fees.

8 2. "Further deferral" means the establishment of a schedule for
9 payment of fees.