

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered September 6, 2023.

(Deleted material is struck through, and new material is underscored.)

On August 22, 2023, Rule 404 was amended but contained a clerical error, which is corrected as follows, *nunc pro tunc* to September 1.

Corrected Rule 404

Rule 404. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a criminal action pursuant to 725 ILCS 5/124A-20 shall be in writing and signed under penalty of perjury by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The Application should be submitted no later than 30 days after sentencing.

(1) An applicant shall use the “Application for Waiver of Court Assessments” form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice, which includes a certification under 735 ILCS 5/1-109.

(2) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for a full or partial waiver of assessments pursuant to 725 ILCS 5/124A-20 and shall include information regarding the applicant’s household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets.

(b) Filing.

(1) No fee may be charged for filing an Application for Waiver of Court Assessments.

(2) The clerk must allow an applicant to file an Application for Waiver of Assessments in the court where the applicant’s case will be heard.

(3) Applications for Waiver of Court Assessments by persons who are exempt from electronic filing under Rule 9(c) may be filed in-person at the clerk of court or by United States mail, third-party commercial carrier, deposit in a drop box receptacle maintained by the clerk, or any other means permitted by the local court. All other Applications for Waiver of Court Assessments shall be electronically filed.

(4) Upon filing, the clerk shall promptly transmit an Application for Waiver of Court Assessments to the judge assigned to rule on it.

(c) Decision of Application. Applications shall be decided as soon as reasonably possible in accordance with the following procedure:

(1) The court shall enter an order ruling on the Application on the basis of the information contained on the face of the Application form, without conducting a hearing, unless the court

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determines that relevant sections of the Application are incomplete or give rise to a factual issue regarding the applicant's satisfaction of the conditions for a waiver under 725 ILCS 5/124A-20(b).

(2) If the court determines that the relevant sections are incomplete or there is a factual issue regarding the applicant's entitlement to a waiver, outright denial is not permitted. The applicant must be notified of the deficiencies and given the opportunity to amend the Application and/or be given a remote hearing in accordance with Rule 45 and any Supreme Court policy on remote court appearances, unless the applicant requests an in-person hearing or will already be present in the courthouse on the date of the hearing. The court shall enter an order stating: (i) the specific eligibility questions that necessitate a hearing; (ii) what documents, if any, must be submitted in support of the Application at or before the hearing, and how to submit them; and (iii) the date and time for a remote hearing unless the applicant requests an in-person hearing, and the remote hearing meeting ID and password or courtroom location, if requested to be in-person. Any hearing on the Application for Waiver of Court Fees shall be scheduled promptly, with due regard for the need to provide reasonable notice to the applicant, but within 30 days of filing. ~~or shall set the Application for a hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of certain documents in support of the Application at the hearing.~~

(3) An order deciding an Application, with or without a hearing, or scheduling a hearing, shall use the "Order for Waiver of Criminal Court Assessments" form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice. The court's ruling on an Application for Waiver of Assessments shall be made according to standards set forth in 725 ILCS 5/124A-20. As provided in the form Order, if the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver are satisfied under 725 ILCS 5/124A-20(b)(1), it shall enter an order waiving the payment of the assessments. If the court determines that the conditions for a partial assessment waiver under 725 ILCS 5/124A-20(b)(2) are satisfied, it shall enter an order for payment of a specified percentage of the assessments. If an Application is denied or an Application for a partial assessment waiver is granted, the court may allow the applicant to defer payment of the assessments, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(d) Document Retention. Any document ordered to be submitted in support of an Application shall be treated by the clerk as a sealed document.

(e) Cases involving representation by public defenders, criminal legal services providers, or attorneys in court-sponsored pro bono program. In any case where a defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored pro bono program, the attorney representing that defendant shall file a certification with the court, and that defendant shall be entitled to a waiver of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule. The certification shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article IV Forms Appendix. "Criminal legal services provider" means a not-for-profit corporation that (i) employs one or more attorneys who are licensed to practice law in the State of Illinois and who directly provide free criminal legal services or (ii) is established for the purpose

of providing free criminal legal services by an organized panel of pro bono attorneys. “Court-sponsored pro bono program” means a pro bono program established by or in partnership with a court in this State for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys.

Adopted Feb. 13, 2019, eff. July 1, 2019; amended May 30, 2023, eff. Sept. 1, 2023; amended Aug. 22, 2023, eff. Sept. 1, 2023; corrected Sept. 6, 2023, *nunc pro tunc* to Sept. 1, 2023.

Committee Comments

(May 30, 2023)

Paragraph (b)(1). Applicants receiving assistance under one or more of the means-based governmental public benefits programs are not required to provide any additional financial information because they have been screened, reviewed, and approved by the relevant government agency and regular recertification is required to maintain that benefit.

Paragraph (c). The procedure prescribed by paragraph (c) is intended to prohibit the practice of deferring ruling on an Application for Waiver of Court Assessments until after completion of the sentence. Criminal Assessments must be imposed by the court at the time of sentencing. Where possible, a ruling on whether the defendant qualifies for a full or partial waiver should also be determined at the time of sentencing, or within a reasonable time thereafter if the defendant submits an Application under paragraph (a) or a certification under paragraph (d) after sentencing.