**Summary Explanation of the 2021 Proposed Revisions to TRCP Rule 145 Statement of Inability to Afford Payment of Court Costs**

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**Attachments – Court docket order and statement of inability form from 2016**

Just before Christmas 2020, the Texas Supreme Court released preliminary revised amendments to Texas Rules of Civil Procedure that impact rules related to low-income litigants filing or participating in litigation without paying costs. The amendments, which are attached and can also be found at [www.txcourts.gov/supreme/administrative-orders/rules-advisories/](https://www.txcourts.gov/supreme/administrative-orders/rules-advisories/)cover Rules 145, 502.3 and 506.4 and the form Statement of Inability to Afford Payment of Court Costs**. Comments are due April 2, 2021 and should be sent to** [**rulescomments@txcourts.gov**](mailto:rulescomments@txcourts.gov)**.**

**Changes to the Rule**

The changes are generally favorable to our low-income client community. Many who practice poverty law will welcome the return of something similar to what was fondly known as the IOLTA Certificate under the pre-2016 version of the Rule. (But while similar, it is not the same as the old Rule 145 or the old IOLTA Certificate).

1. Certain categories of evidence will be prima facie proof of the declarant’s inability to afford costs:
   1. The declarant receives benefits from a means-tested government entitlement program,
   2. The declarant is being represented in the case by an attorney who is providing free legal services to the declarant through:
      1. a provider funded by the Texas Access to Justice Foundation;
      2. a provider funded by the Legal Services Corporation; or
      3. a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services; or
   3. The declarant has applied for free legal services for the case through a provider listed in (2) and was determined to be financially eligible but was declined representation.

There must be a document attached to the Statement establishing these categories of evidence for it to be considered prima facie evidence.

1. Court reporters will need to follow the same process to contest a Statement of Inability as a party or a clerk; their contest must contain sworn evidence-not merely allegations-either that the Statement was materially false when made or that because of changed circumstances, it is no longer true. Under the prior version of the Rule, the Court could file a contest whenever a record was requested without any additional evidentiary requirement.

The Court notes that “these changes are intended to reduce frivolous challenges to a Statement, which cost time and resources.”

An additional change is a requirement that “[a]n order requiring the declarant to pay costs must state in conspicuous type: “You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145.”

Justice Court Rules TRCP 502.3, and 506.4 have been modified for conformity, readability and to correct a typographical error.

**New Form**

The Court has also issued a new *form Statement of Inability to Afford Payment of Court Costs or an Appeal Bond*. The new version is at the end of the Docket Order with the Amendments. Unfortunately, there is no redlined version provided showing the changes. To see where changes have been made you need to pull up the 2016 version of the form and compare line by line. For your convenience, a copy of the 2016 form currently in use is provided in these materials. Note, the new form still lists the same footer as the old form (Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 16-9122), so you will want to make sure you have a method to track which version you are looking at. I have not fully studied the new form, but I already found a few problem areas. For example, Section 4 does not seem to not have a place to record a spouse’s income, and the language in section 9 for the Declaration/Affidavit is confusing. I hope others will review the new form carefully and to see if there any other problematic sections. Once this form goes out, it will be around and in use for a long period of time. The Court’s process to amend and revise is not a quick process.

**Comments/Questions/Concerns**

If you have comments, questions, concerns about the proposed amendments to the Rule, I’d really like to hear about them. I am working with the Texas Access to Justice Commission on providing joint comments. If you could please let me know by Friday, January 29, 2021, that will give me time to work on comments with the Commission. Send them to me at [mcreed@trla.org](mailto:mcreed@trla.org). You can also call me at 512-374-2729. The comments don’t have to be artfully worded, just let me know about what concern you have in enough details so I can try to address it in our comments. You also can submit your comments directly to the court at [**rulescomments@txcourts.gov**](mailto:rulescomments@txcourts.gov)**.** If you do so, please send me a copy, as you may have important issues that should be addressed in my comments as well and it is helpful to know what others have sent to the Court.

While organizations funded by the Legal Services Corporation are subject to many restrictions related to submitting comments on administrative rulemaking, pursuant to 45 CFR 1612, for, comment on proposed court rules is not restricted. (45 CFR §1612.5(c) (7) Nothing in this part is intended to prohibit a recipient from: Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.)

**Why This Is Important**

In 2014-2015, the Poverty Law Section established a committee to address issues related to Affidavits and Statements of Inability to Pay and gathered detail reports of problems with it from around the state. The committee prepared a report documenting and detailing those problems, and this provided significant momentum to propel the finalization of a long pending complete rewrite of TRCP 145 and related rules in 2016. The expertise of the practitioners of poverty law is required to ensure the amended rules and form will be beneficial to our client community and assist in efficiently meeting the needs of low-income Texans. There will continue to be district and county clerks and judges who fail to follow the law even after these amendments. But if we participate in securing well-crafted laws and forms, we will the means to address those problems in the court system.