

IN THE SUPREME COURT OF FLORIDA

In Re: Amendments to Supreme Court Approved
Florida Family Law Forms-Determination
Of Indigence Forms

Case No. 04-2492

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Comments of Florida Legal Services on
Behalf of Legal Aid Programs

Introduction

Florida's Interest on Trust Accounts (IOTA) program, administered by the Florida Bar Foundation, provides funds to 32 grantees state-wide (legal Aid Programs) who provide civil legal services to people living in poverty. In calendar year 2003, these programs handled almost 86,000 cases. A large part of these cases involves litigation in the state courts including family law, housing, and consumer issues. Thirty-seven percent of them were family law matters. Substantially all clients of Legal Aid Programs are indigent within the meaning of Fla. Stat. § 57.082(a)(1).

On June 30, 2005, this Honorable Court approved an uniform form for utilization by the clerks of the circuit courts. *In Re Approval of Application for Determination of Indigent Status Forms For Use By Clerks*, __ So.2d __, 30 Fla. L. Weekly S508a (June 30, 2005) These comments to the Application For Determination Of Civil Indigent Status are submitted by Florida Legal Services, Inc. on behalf of the IOTA funded programs. We have a significant interest in insuring a fair and equitable administration of the system.

Comments on the Form¹

I. Existing Form:

"Notice to Applicant: If you qualify for civil indigence you must enrol in the Clerk's Office payment plan and pay a one -time administrative fee of \$25.00."

Comment:

This statement may confuse applicants. If one qualifies as an indigent one has the right

¹Only those portions of the form for which we have comment are reproduced here followed by the comment and proposed language.

to file the case, have it heard, and judgment entered with no payment of filing or administrative fees in advance. See, Fla. Stat. § 57.082 (5) (“...case many not be impeded in any way, delayed in filing, or delayed in its progress, including final hearing and order, due to nonpayment of **any fees** by an indigent person” [emphasis supplied]). The notice should make clear that the administrative fee may be assessed and become part of the payment plan. Further, the notice may lead an applicant to believe that the filing fee is the only fee for which he/she is liable.

Also, the form does not provide information about payment plans. The statute requires that the payment plans be affordable and also that the payment plans are subject to judicial review. See Fla. Stat. § 57.082(5). It is suggested that additional notice be included in the form.

The existing notice, while short, has a Flesch-Kincaid readability grade level of 12.0. The proposed language, while lengthier, has a Flesch-Kincaid readability grade level of 8.2.

Proposed Language:

Notice to Applicant: The Clerk may charge a one-time \$25 administrative fee. This charge is in addition to filing fees and other charges related to your case. If you are found to be indigent, the fee will become part of your payment plan. Your payment plan’s monthly payment will normally not be more than 2 percent of your annual net income divided by 12. If you disagree with the amount of your payment, you may ask the court to review it. There is no additional charge for this review.

II. Existing Form:

Item #6. “I have a private lawyer in this case..... Yes No ”

COMMENT: Fla. Stat. § 57.082 refers to “private lawyer” in several places (.082(1)(a)(4)(c); .082(4)(a)1 & 2)), but there is no definition. The term “private attorney” generally refers to an individual in private practice and not an employee of a non-profit corporation. However, the applicant could be represented by a legal aid attorney. The proposed revision would let persons reviewing the application have a full picture of whether the applicant is proceeding *pro se* or is represented.

Proposed Language:

Item #6. I have a lawyer in this case Yes No

III. Existing Form:

“**NOTICE:** If the applicant is determined by the clerk to be Not Indigent, you may seek

judicial review by filing a petition with the court.”

Comment:

This notice should add that no filing fee will be charged for this review. (See Fla. Stat. §57.082(2)(e) “Applicant may seek review of the clerk’s determination that the applicant is not indigent by filing a petition to review the clerk’s decision, for which no filing fee maybe charged.”)

Proposed Language:

NOTICE: If you are determined by the clerk to be Not Indigent, you may seek judicial review by filing a petition with the court. There is no additional charge for this petition.

Respectfully submitted by:

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