

SUPREME COURT OF ARKANSAS

IN RE RULES OF CIVIL PROCEDURE
3 AND 72

Opinion Delivered February 23, 2012

PER CURIAM

We are amending two rules of civil procedure based on the recommendation of the task force that the court established to study the significant shortfall in revenue experienced by the State Administration of Justice Fund. *See* Ark. Code Ann. § 19-5-993. The most severe consequence of this shortfall has been the lack of funds to pay the salaries of trial court assistants. Work is underway on many fronts seeking both short- and long-term solutions to the problems with the fund.

The task force has recommended two changes to the rules of civil procedure that impact filing fees, which is one of the sources of revenue for the fund.

1. Amend Rule 3 by adding new subsection (d) to address the situation where divorce actions are piggybacked onto domestic-violence cases. By statute, there is no filing fee when a domestic-violence case is filed. The task force found evidence that this statute is being subverted, and divorce actions are brought without the assessment of a filing fee and without regard to the financial condition of the party. A similar piggybacking of separate causes of action was identified with adoptions and guardianships (new subsection (e)).

2. Amend Rule 72 to give the circuit judges guidance in ruling on *in forma pauperis* petitions and prescribing the affidavit to be used.

The court asked the Committee on Civil Practice to review these recommendations.

The committee studied the recommendations and, with a few minor revisions, voted to endorse them.

We thank both the task force and the Civil Practice Committee for their work. We adopt, effective immediately, the amendments to Rules 3 and 72, as set out below and republish the rules. The changes made to the rules are illustrated in the End Note.

Arkansas Rules of Civil Procedure

Rule 3. Commencement of action — “Clerk” defined.

(a) A civil action is commenced by filing a complaint with the clerk of the court who shall note thereon the date and precise time of filing.

(b) The term “clerk of the court” as used in these Rules means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court pursuant to Ark. Code Ann. § 14-14-502(b)(2)(B). In counties where the county clerk serves as the ex officio clerk of any division of the circuit court, the filing requirement shall be satisfied when the complaint is filed with either the circuit clerk or the county clerk.

(c) The clerk shall assign a new case number and charge a new filing fee for the filing of any case that is refiled after having been dismissed.

(d) No other claim or counterclaim for relief, including without limitation, divorce, annulment, separate maintenance, or paternity, shall be asserted in an action filed under the Domestic Abuse Act, Ark. Code Ann. § 9-15-101 et seq., but a separate action seeking other relief shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived pursuant to Rule 72 of these rules.

(e) A petition for adoption cannot be asserted in a guardianship proceeding, but a separate

action shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived pursuant to Rule 72 of these rules.

Rule 72. Suits in forma pauperis.

(a) Every indigent person who shall have a cause of action against another may petition the court in which the action is pending, or in which it is intended to be brought, for leave to prosecute the suit *in forma pauperis*.

(b) All such petitions shall be accompanied by an assertion of indigency, verified by a supporting affidavit. The affidavit form is set out below. Any petition not in compliance with this provision will be returned to the petitioner. There shall be attached to the petition a copy of the complaint or proposed complaint.

(c) The court shall make a finding regarding indigency based on the affidavit. In making its determination, the court may consider the current federal poverty guidelines which may be obtained from the Administrative Office of the Courts. If satisfied from the facts alleged that the petitioner has a colorable cause of action, the court may by order allow the petitioner to prosecute the suit *in forma pauperis*. Every person permitted to proceed *in forma pauperis* may prosecute the suit without paying filing fees and other fees charged by the clerk and shall not be prevented from prosecuting the suit by reason of being liable for the costs of a former suit brought against the same defendant.

(d) No person shall be permitted to prosecute any action of slander, libel or malicious prosecution *in forma pauperis*.

(e) The form of the affidavit shall be as follows:

IN THE _____ COURT _____, COUNTY, ARKANSAS

IN RE PETITION OF _____
TO PROCEED IN FORMA PAUPERIS

NO. ____

AFFIDAVIT IN SUPPORT OF
REQUEST TO PROCEED IN FORMA PAUPERIS

I, _____, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ____ No ____

(a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

(b) If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

(a) Business, profession or any form of self-employment?

Yes ____ No ____

(b) Rent payments, interest or dividends?

Yes ____ No ____

(c) Pensions, annuities or life insurance payments?

Yes ____ No ____

(d) Gifts or inheritances?

Yes ___ No ___

(e) Any other sources?

Yes ___ No ___

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account?

Yes ___ No ___

If the answer is yes, state the total amount in each account.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ___ No ___

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

[6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare funds?

Yes ___ No ___

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution.]

I understand that false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Signature of Petitioner

STATE OF _____

COUNTY OF _____

Petitioner, _____, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2____.

Notary Public

My commission expires: _____

[(To be completed by authorized officer of penal institution)]

CERTIFICATE

I hereby certify that the petitioner herein, _____, has the sum of \$ _____ on account to his/her credit at the _____ institution where he/she is confined.

I further certify that petitioner likewise has the following securities to his/her credit according to the records of said institution:

_____.

Authorized Officer of Institution]

END NOTE

Rule 3. Commencement of action — “Clerk” defined.

...

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(b) All such petitions shall be accompanied by an assertion of indigency, verified by a supporting affidavit. The affidavit form is set out below ~~will be provided by the court for such purposes.~~ Any petition not in compliance with this provision will be returned to the petitioner. There shall be attached to the petition a copy of the complaint or proposed complaint.

(c) The court shall make a finding regarding indigency based on the affidavit. In making its determination, the court may consider the current federal poverty guidelines which may be obtained from the Administrative Office of the Courts. If satisfied from the facts alleged that the petitioner has a colorable cause of action, the court may by order allow the petitioner to prosecute the suit in forma pauperis. Every person permitted to proceed in forma pauperis may prosecute the suit without paying filing fees and other fees charged by the clerk and shall not be prevented from prosecuting the suit by reason of being liable for the costs of a former suit brought against the same defendant. The court to which such petition is presented, if satisfied of the facts alleged that the petitioner has a colorable cause of action, may by order allow him to prosecute his suit in forma pauperis. Every person so permitted to proceed in forma pauperis may prosecute his suit without paying any fees to the officers of the court, and shall not be prevented from prosecuting the same by reason of his being liable for the costs of a former suit brought by him against the same defendant.

(d) No person shall be permitted to prosecute any action of slander, libel or malicious prosecution in forma pauperis.

(e) The form of the affidavit shall be as follows: *[Form is new.]*