



Rep. Karen A. Yarbrough

Filed: 3/31/2011

09700HB0943ham001

LRB097 03763 AJ0 53340 a

1 AMENDMENT TO HOUSE BILL 943

2 AMENDMENT NO. _____. Amend House Bill 943 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 5-105 as follows:

6 (735 ILCS 5/5-105) (from Ch. 110, par. 5-105)

7 Sec. 5-105. Leave to sue or defend as an indigent person.

8 (a) As used in this Section:

9 (1) "Fees, costs, and charges" means payments imposed
10 on a party in connection with the prosecution or defense of
11 a civil action, including, but not limited to: filing fees;
12 appearance fees; fees for service of process and other
13 papers served either within or outside this State,
14 including service by publication pursuant to Section 2-206
15 of this Code and publication of necessary legal notices;
16 motion fees; jury demand fees; charges for participation

1 in, or attendance at, any mandatory process or procedure
2 including, but not limited to, conciliation, mediation,
3 arbitration, counseling, evaluation, "Children First",
4 "Focus on Children" or similar programs; fees for
5 supplementary proceedings; charges for translation
6 services; guardian ad litem fees; charges for certified
7 copies of court documents; and all other processes and
8 procedures deemed by the court to be necessary to commence,
9 prosecute, defend, or enforce relief in a civil action.

10 (2) "Indigent person" means any natural person who
11 meets one or more of the following criteria:

12 (i) He or she is receiving assistance under one or
13 more of the following public benefits programs:
14 Supplemental Security Income (SSI), Aid to the Aged,
15 Blind and Disabled (AABD), Temporary Assistance for
16 Needy Families (TANF), Food Stamps, General
17 Assistance, State Transitional Assistance, or State
18 Children and Family Assistance.

19 (ii) His or her available income is 125% or less of
20 the current poverty level as established by the United
21 States Department of Health and Human Services, unless
22 the applicant's assets that are not exempt under Part 9
23 or 10 of Article XII of this Code are of a nature and
24 value that the court determines that the applicant is
25 able to pay the fees, costs, and charges.

26 (iii) He or she is, in the discretion of the court,

1 unable to proceed in an action without payment of fees,
2 costs, and charges and who is unable to give security
3 therefor, and whose payment of those fees, costs, and
4 charges, or security therefor, would result in
5 substantial hardship to the person or his or her
6 family.

7 (iv) He or she is an indigent person pursuant to
8 Section 5-105.5 of this Code.

9 (b) On the application of any person, before, or after the
10 commencement of an action and on a yearly basis within the same
11 action thereafter, a court, on finding that the applicant is an
12 indigent person and that no other person beneficially
13 interested in the recovery sought is able to pay the fees,
14 costs, and charges of the action, shall grant the applicant
15 leave to sue or defend the action without payment of the fees,
16 costs, and charges of the action.

17 (c) An application for leave to sue or defend an action as
18 an indigent person shall be in writing and supported by the
19 affidavit of the applicant or, if the applicant is a minor or
20 an incompetent adult, by the affidavit of another person having
21 knowledge of the facts. The affidavit shall state that it is
22 sworn under penalty of perjury and shall be sworn before a
23 notary public or other officer authorized to administer oaths.
24 The contents of the affidavit shall be established by Supreme
25 Court Rule. At the time of the filing of the affidavit, the
26 applicant shall file under seal a copy of the applicant's most

1 recent State and federal income tax returns. The court may
2 require the moving party to file with the affidavit a
3 certificate of an attorney stating that the attorney has
4 examined the action and believes there is merit to the moving
5 party's contentions. An attorney may not charge an applicant a
6 fee for preparation of an indigent application unless the
7 preparation of the application is part of a contingency fee
8 agreement described in subsection (g). Any other party in
9 interest may contest the truth of an affidavit of indigency by
10 verifying affirmatively under oath that the same is untrue. The
11 issue that arises from the affidavits shall be heard and
12 determined by the court. The court shall provide, through the
13 office of the clerk of the court, simplified forms consistent
14 with the requirements of this Section and applicable Supreme
15 Court Rules to any person seeking to sue or defend an action
16 who indicates an inability to pay the fees, costs, and charges
17 of the action. The application and supporting affidavit may be
18 incorporated into one simplified form. The clerk of the court
19 shall post in a conspicuous place in the courthouse a notice no
20 smaller than 8.5 x 11 inches, using no smaller than 30-point
21 typeface printed in English and in Spanish, advising the public
22 that they may ask the court for permission to sue or defend a
23 civil action without payment of fees, costs, and charges. The
24 notice shall be substantially as follows:

25 "If you are unable to pay the fees, costs, and charges
26 of an action you may ask the court to allow you to proceed

1 without paying them. However, you will be required to
2 reimburse these court fees, costs, and charges at the end
3 of the case if you receive a monetary judgment or
4 settlement. Ask the clerk of the court for forms."

5 (c-1) In addition to filing the affidavit required by
6 subsection (c), if the applicant in a civil action is a
7 prisoner, the applicant shall be required to pay the full
8 amount of any filing fees. At the time the application and
9 affidavit are filed, the applicant prisoner shall submit a
10 certified copy of the trust fund account statement (or
11 institutional equivalent) for the prisoner for the 6-month
12 period immediately preceding the filing of the complaint or
13 appearance, obtained from the appropriate official of each
14 prison at which the prisoner is or was confined. The court
15 shall assess and, when funds exist, collect, as partial payment
16 of any court fees required by law, an initial filing fee of 20%
17 of the greater of (1) the average monthly deposits to the
18 prisoner's account, or (2) the average monthly balance in the
19 prisoner's account for the 6-month period immediately
20 preceding the filing of the complaint or notice of appeal.
21 After payment of the initial filing fee, the prisoner shall be
22 required to make monthly payments of 20% of the preceding
23 month's income credited to the prisoner's account. The agency
24 having custody of the prisoner shall forward payments from the
25 prisoner's account to the clerk of court each time the amount
26 in the account exceeds \$10 until the court fees are paid. In no

1 event shall the court fees collected exceed the amount of fees
2 permitted by statute, and in no event shall a prisoner be
3 prohibited from bringing a civil action or appealing a civil
4 judgment for the reason that the prisoner has no assets and no
5 means by which to pay the court fees.

6 (c-2) In an action for dissolution of marriage or spousal
7 maintenance, if the applicant is determined by the court to be
8 an indigent person, the court shall require the payment of the
9 applicant's fees and costs to be paid by the spouse. If the
10 spouse is determined to be an indigent person, the applicant
11 and spouse may proceed without payment of the fees, costs, and
12 charges of the action.

13 (d) The court shall rule on applications under this Section
14 in a timely manner based on information contained in the
15 application and tax returns unless the court, in its
16 discretion, requires the applicant to personally appear to
17 explain or clarify information contained in the application. If
18 the court finds that the applicant is an indigent person, the
19 court shall enter an order permitting the applicant to sue or
20 defend without payment of fees, costs, or charges. If the
21 application is denied, the court shall enter an order to that
22 effect stating the specific reasons for the denial. If the
23 court denies the application, the court will give notice to the
24 applicant by written order that the case will be dismissed if
25 the fee is not paid within 90 days after the date of the order,
26 unless otherwise ordered by the court. The clerk of the court

1 shall promptly mail or deliver a copy of the order to the
2 applicant.

3 (e) The clerk of the court shall not refuse to accept and
4 file any complaint, appearance, or other paper presented by the
5 applicant if accompanied by an application to sue or defend in
6 forma pauperis, and those papers shall be considered filed on
7 the date the application is presented. If the application is
8 denied, the order shall state a date certain by which the
9 necessary fees, costs, and charges must be paid. Unless
10 otherwise ordered by the court, if the necessary fees, costs,
11 and charges are not paid within 90 days after the denial, the
12 case shall be dismissed. The court, for good cause shown, may
13 allow an applicant whose application is denied to defer payment
14 of fees, costs, and charges, make installment payments, or make
15 payment upon reasonable terms and conditions stated in the
16 order. The court's order shall contain the payment due date and
17 payment amount. The court shall ~~may~~ dismiss the claims or
18 defenses of any party failing to pay the fees, costs, or
19 charges within 90 days after the time and in the manner ordered
20 by the court. A determination concerning an application to sue
21 or defend in forma pauperis shall not be construed as a ruling
22 on the merits.

23 (f) The court shall ~~may~~ order the non-prevailing party, who
24 is paying the judgment or settlement, an indigent person to
25 first pay to the clerk of the circuit court and to the sheriff
26 for service of process, if any, all ~~or a portion~~ of the fees,

1 costs, or charges waived pursuant to this Section out of moneys
2 recovered by the indigent person pursuant to a judgment or
3 settlement resulting from the civil action, in an amount not to
4 exceed the amount of the settlement or judgment. If the court
5 has paid on behalf of the prevailing party the cost of
6 stenographic transcript, printed record, postage, service by
7 publication, notice by publication, translation services, or
8 any other fee, cost, or charge, the same shall be taxed in
9 favor of the court and paid by the non-prevailing party from
10 the judgment or settlement. However, nothing in this Section
11 shall be construed to limit the authority of a court to order
12 another party to the action to pay the fees, costs, or charges
13 of the action. If a judgment against a prisoner includes the
14 payment of costs under this subsection, the prisoner shall be
15 required to pay the full amount of the costs ordered. The
16 prisoner shall be required to make payments for costs under
17 this subsection in the same manner as provided for filing fees
18 under subsection (c-1). In no event shall the costs collected
19 exceed the amount of the costs ordered by the court.

20 (g) A court, in its discretion, may appoint counsel to
21 represent an indigent person, and that counsel shall perform
22 his or her duties without fees, charges, or reward. An
23 applicant under this Section may proceed pro se, or may be
24 represented by court-appointed counsel pursuant to this
25 subsection, a civil legal services provider pursuant to
26 subsection (a)(2)(iv), or another attorney representing the

1 person on a contingent fee basis or without fees, charges, or
2 reward. Any attorney who represents a person in an action in
3 which that person has been determined to be indigent by the
4 court shall represent the person without fees, charges, or
5 reward or on a contingent fee basis, or shall immediately file
6 a motion with the court to have the indigent status invalidated
7 with all fees, costs, and charges in the case immediately due.
8 If the attorney enters into a contingency fee agreement with
9 the applicant, the amount of the court fees, costs, and charges
10 to be paid from the judgment or settlement pursuant to
11 subsection (e) shall not be considered as part of the judgment
12 or settlement amount for purposes of the contingency fee
13 agreement. If an attorney who is not court-appointed and is not
14 a civil legal services provider represents the applicant in the
15 case, that attorney must file a statement with the court that
16 he or she is representing the applicant on a contingent fee
17 basis or without receiving any fees, charges, or reward from
18 the applicant. If the attorney fails to file such a statement
19 or a motion to invalidate the indigent status within 10 days
20 after the filing of his or her appearance in the case, the
21 clerk of the circuit court shall send a notice to the applicant
22 and the applicant's attorney notifying them that the case will
23 be dismissed within 30 days unless all fees, costs, and charges
24 in the case are immediately paid. If all fees, costs, and
25 charges in the case are not paid within 30 days, the case shall
26 be dismissed.

1 (g-1) Notwithstanding any filing fee, or any portion
2 thereof, that may have been paid, the court shall revoke the
3 provision of any relief under this Section and dismiss the case
4 at any time, on its own initiative or upon motion, if the court
5 determines that (1) the allegation of poverty is untrue, or (2)
6 the action or appeal (i) is frivolous, malicious, has no
7 arguable basis in law or fact, or reasonably appears to be
8 intended to harass one or more named defendants, (ii) fails to
9 state a claim on which relief may be granted, (iii) seeks
10 monetary relief against a defendant who is immune from such
11 relief, (iv) seeks relief for mental or emotional injury where
12 there has been no related allegation of a physical injury, or
13 (v) is substantially similar to a previous claim filed by the
14 applicant in that it involves the same parties or arises from
15 the same operative facts as a previous claim.

16 (g-2) A person who knowingly provides false information to
17 the court in seeking a determination of indigent status under
18 this Section commits a Class C misdemeanor. If the court has
19 reason to believe that any applicant, through fraud or
20 misrepresentation, was improperly determined to be indigent,
21 the matter shall be referred by the court to the State's
22 Attorney.

23 (g-3) In no event shall an applicant under this Section
24 bring a civil action or appeal a judgment in a civil action or
25 proceeding under this Section if the applicant has, on 3 or
26 more occasions, brought an action or appeal in a court of this

1 State that was dismissed on one or more of the grounds listed
2 in subsection (g-1), unless the applicant is in imminent danger
3 of serious physical injury.

4 (h) Nothing in this Section shall be construed to affect
5 the right of a party to sue or defend an action in forma
6 pauperis without the payment of fees, costs, or charges, or the
7 right of a party to court-appointed counsel, as authorized by
8 any other provision of law or by the rules of the Illinois
9 Supreme Court.

10 (i) The provisions of this Section are severable under
11 Section 1.31 of the Statute on Statutes.

12 (Source: P.A. 91-621, eff. 8-19-99.)"