

Affidavit of Indigency

Representing Yourself in an Eviction

Ask the court not to charge you court fees and costs

If you need to go to court, but you cannot afford the fees and costs of your case, you may not have to pay them. The court can “waive” or not charge their fees and have the state pay other costs.

If the court clerk or a judge approves your forms, you will not have to pay the court fees and costs.

Use the Affidavit of Indigency

Tell the court you cannot afford the fees and costs in your case, and

Ask the court to waive your court fees and get the state to pay the other costs.

You may also need to use the **Supplement to the Affidavit of Indigency**.

You can get the forms in this booklet or from the clerk’s office in every court or online:

Affidavit of Indigency

mass.gov/courts/docs/forms/sjc/affidavitofindigency.pdf

Supplement to the Affidavit of Indigency

mass.gov/doc/supplement-to-the-affidavit-of-indigency/download

You can also complete an Affidavit of Indigency online: apps.suffolklitlab.org/start/indigency

These forms are **only** for Massachusetts state courts. Federal courts have different forms and different rules.

BOOKLET

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Common questions about Affidavit of Indigency

How do I show the court I cannot afford my case?

You should not have to pay court costs if:

A. You get any of these benefits:

- Transitional Aid to Families with Dependent Children (TAFDC)
- Emergency Aid to Elderly, Disabled or Children (EAEDC)
- Supplemental Security Income (SSI)
- MassHealth
- Massachusetts Veterans Benefits Programs

B. Your household income is less than 125% of the current Federal Poverty Guidelines. Use the income your household gets **after** you subtract taxes. See current Federal Poverty Guidelines: mass.gov/doc/poverty-threshold-guidelines/download

C. You cannot pay court costs **and** pay for basic needs like food, shelter and clothing. If you have to choose between paying court costs or your basic needs, your income is low enough.

What costs will the court waive or get the state to pay?

If the court approves your Affidavit of Indigency, they can waive or get the state to pay two kinds of costs – **Normal fees and costs** and **Extra fees and costs**.¹

The court **cannot** pay for your lawyer.

Normal fees and costs

Normal fees and costs are those that everyone must pay in the kind of case you are involved in. They include:

- Court filing fees and surcharges.
- Fees for photocopies, issuing, or certifying papers.
- Fees to a constable or sheriff for serving court papers.
- Fees for witness or document subpoenas.
- Costs of publishing notices for your case, and
- Appeal fees and surcharges.

Extra fees and costs

If you have costs and fees that are not considered normal costs and fees, they are “extra costs and fees.”

¹ **Normal fees and costs** and **extra fees and costs** are defined in [MGL, Chapter 261, Section 27A](#).

Examples of extra fees and costs are:

- Costs of expert testing, examination or testimony.
- Costs of taking a deposition of witnesses.
- Cost of requesting a recording of your hearing if you appeal your case.
- Appeal bonds

Is my Affidavit of Indigency confidential?

Yes. Your Affidavit of Indigency is confidential. The **only** people who can see it and the waiver you get from the court are you, your lawyer and the people the court pays, like:

- Authorized court personnel,
- The sheriff or constable that serves your notice, or
- The billing department at the newspaper if you need to publish your notice.

The court must have written permission to show or send copies of your forms to anyone else. If you need someone else to see your form or the fee waiver, write to the court. Name the person in your letter and give the court permission to show or send the person copies. Give a copy of your letter to the person you need to see these forms.

You do not have to give copies of your form or fee waiver to anyone else in your case. If another party in the case wants to see these documents, they must get a court order.

How do I apply?

1. Complete the Affidavit of Indigency and sign it. See **Fill out the Affidavit of Indigency** on page 7.
2. File your **Affidavit of Indigency** with the clerk of the court.
3. If you check Category (C) on the Affidavit, you also need to fill out the **Supplement to Affidavit of Indigency**.

What happens after I file my Affidavit of Indigency?

If you file other court papers at the same time as the Affidavit of Indigency, the clerk must file and date everything on the date you give them to the clerk. If you cannot afford to pay the court fees, the clerk must still file the papers on the same date.

- If you ask only for **Normal costs** on your Affidavit of Indigency, the clerk should approve it right away and give you a "fee waiver." The clerk should **only** send your Affidavit to a judge if they think there is a problem with your application.
- If you ask for **Extra costs**, the clerk may approve your request. If they do not approve your request, the clerk must present it to a judge within 5 days. The judge may approve your request without a hearing.

The clerks must let you file other court papers even if the court does not approve your Affidavit of Indigency right away.

Do I have to give the clerk more information?

If you check **Category A or B**, the clerk should not ask you for more information. The clerk should not ask for proof about any public assistance you get or your income. They should not tell

you to complete a **Supplement to the Affidavit**. And they should not send your Affidavit to a judge if you completed the form correctly.

If you check Category C, you must fill out the **Supplement to the Affidavit**. The clerk should only send your Affidavit to a judge if the clerk believes you **may** be able to pay the filing fee and still pay for food, shelter and clothing.

What can I do if the clerk asks me for more information?

If you check **Category A or B**, you can:

- Give the clerk a copy of the [instructions](#) to court staff on page 12 of this booklet. Tell them these instructions were written by the Supreme Judicial Court to help court staff.
- Ask the clerk to speak with their supervisor.
- Call your local legal aid office for help.
- Give the clerk the extra documents if you have them, but you do not have to.

Do I have to talk to a judge?

If a judge needs to talk to you about your Affidavit of Indigency, you will get a hearing.

A judge can **only** refuse to waive court fees if they hold a hearing. If you have a hearing, explain to the judge why you need documents or services for your case.

If you check Category C, and you have a hearing before a judge, bring proof of your income, like pay stubs, and bring proof of expenses like childcare costs, utility bills, car payments, and medical bills.

Can the court refuse to waive some of the costs?

The court may agree to waive some of the fees or have the state pay some, but not all, of the costs you request. But you must have a hearing before a judge first.

What if the court denies my Affidavit of Indigency?

If the clerk does not approve your application, the clerk must automatically send it to a judge to review.

If you disagree with a judge's decision, you can "appeal" to a higher court to review the decision. The courts give short deadlines for appeals. You must act quickly. Ask the clerk's office about how to appeal and contact legal aid.

Fill out the Affidavit of Indigency

SECTION 1

Check only 1 box that explains why your income is too low to pay your court costs:

Category (A)

You get benefits from:

- Massachusetts Transitional Aid to Families with Dependent Children (TAFDC)
- Massachusetts Emergency Aid to Elderly, Disabled & Children (EAEDC)
- Federal Supplemental Security Income (SSI)
- Massachusetts Veterans Benefits
- MassHealth (formerly Medicaid)

If you check MassHealth and get other benefits, check off the other benefits, too.

Category (B)

Your household income, after taxes, is less than 125% of the current Federal Poverty Guidelines.

The federal government updates these guidelines every year. See the [MassLegalHelp.org Poverty Guidelines](https://www.mass.gov/info-details/mass-legal-help-org-poverty-guidelines).

Category (C)

Your income is more than 125% of poverty in Category B. But if you paid court costs, you would not be able to pay for food, shelter and clothing.

What happens if I Check A or B?

If you pick Category A or B and you only ask for a **waiver of normal costs**, the clerk should approve your **Affidavit of Indigency** automatically. But the form must be complete.

If you ask for a **waiver of extra costs**, the clerk may send you to talk to a judge to explain why you need the things you are asking for.

What happens if I check C?

If you pick Category C, you must fill out another form, the **Supplement to the Affidavit of Indigency**. Clerks can approve your Affidavit if you check Category C. The clerk only needs to send the forms to a judge if they believe you **may** be able to pay the costs in your case and still pay for your basic needs.

SECTIONS 2 and 3

In Section 2 and Section 3 of the **Affidavit of Indigency**, check the boxes next to the costs you need the court to waive or pay. And list costs that are not already on the form. For example:

- If you are filing a case, check the box for court “Filing fee and any surcharge.” You can find filing fees online [mass.gov/court-filing-fees-payment-information](https://www.mass.gov/court-filing-fees-payment-information)
- If you need to have a sheriff or other officer serve court documents, check the box next to Fees or costs for serving court summons, witness subpoenas or other court papers.

- If you need publication of notice in a newspaper, check the box next to “Other fees or costs” and enter estimates of the cost.

If you do not know the cost of something you need for your case, list the service you need and your best estimate of the cost. You can also ask the clerk at the court about the costs.

The court cannot pay for your lawyer.

Later in your case, if you need other court costs like subpoenas for witnesses or costs of taking depositions of witnesses, file another Affidavit of Indigency for these costs.

If you do not fill in the amounts of all the costs, the court should still accept your application.

What is a Substitution of a Service?

In Sections 2 and 3, the last box is for **Substitution**. A court can order an easier or less costly way to provide the services you need. For example, a court can order that you can post notices in certain places instead of publishing the notice in a newspaper.

You can ask for a substitute method on this line in your application.

Sign the Affidavit

Sign the Affidavit of Indigency. When you sign, you swear that everything you put on the form is true, as far as you know.

What to take to court when you file the Affidavit?

If you check Category (A) or (B), you only need to take the Affidavit to court. You do not have to bring anything else. You can bring documents that show you get benefits or your income. But you do not have to bring any proof.

If you check Category (C), take the Affidavit and the Supplement to court. Bring proof of your income, like pay stubs, and expenses, like childcare costs, utility bills, car payments, and medical bills in case you need to have a hearing before a judge.

COMMONWEALTH OF MASSACHUSETTS

AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION
OR STATE PAYMENT OF FEES & COSTS

(Note: If you are **currently confined in a prison or jail** and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of “normal” fees (for initial filing and service), **do not use this form**. Obtain separate forms from the clerk.)

Court	Case Name and Number (if known)	
Name of applicant: _____		
Address: _____		
(Street and number)	(City or town)	(State and Zip)

SECTION 1: Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:
I AM INDIGENT in that (*check only one*):

- A.** I receive public assistance under (check form of public assistance received):
- Transitional Aid to Families with Dependent Children (TAFDC)
 - Emergency Aid to Elderly, Disabled or Children (EAEDC)
 - Massachusetts Veterans Benefits Programs
 - Medicaid (MassHealth)
 - Supplemental Security Income (SSI); **or**

B. My income, less taxes deducted from my pay, is \$_____ per week biweekly month year (check period that applies) for a household of ___ persons, consisting of myself and ___ dependents; which income is at or below the court system’s poverty level;

(Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk or check online at: <https://www.mass.gov/doc/poverty-threshold-guidelines/download>. The court system's poverty level is updated each year).

List any other available household income for the checked period on this line \$_____ ; **or**

C. I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

SECTION 2: (Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or alower cost, paid for by the state): (Check all that apply and, in any "\$_____" blank, indicate your best guess as to the cost, **if known**.)

- Filing fee and any surcharge. \$_____
- Filing fee and any surcharge for appeal. \$_____
- Fees or costs for serving court summons, witness subpoenas or other court papers. \$_____
- Other fees or costs of \$_____ for (specify): _____
- Substitution (specify): _____

SECTION 3: I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

- Cost, \$_____, of expert services for testing, examination, testimony, or other assistance (specify): _____
- Cost, \$_____, of taking and/or transcribing a deposition of (specify name of person): _____
- Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant not represented by Committee for Public Counsel Services (CPCS-public defender).
- Appeal bond
- Cost, \$_____, of preparing written transcript of trial or other proceeding
- Other fees and costs, \$_____, for (specify): _____
- Substitution (specify): _____

Signed under the penalties of perjury

_____ X _____
Date signed

By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel, or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March, 2003.

COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENT TO AFFIDAVIT OF INDIGENCY
AND REQUEST FOR WAIVER, SUBSTITUTION
OR STATE PAYMENT OF FEES & COSTS

(Note: If you checked (C) on the AFFIDAVIT OF INDIGENCY, you must complete this form.)

_____ Court _____ Case Name and Number (if known)

Name of applicant: _____

Address: _____
(Street and number) (City or town) (State and Zip)

Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear or affirm as follows:

1. Personal Information

- A. Date of Birth: _____
- B. Highest Grade in School: _____
- C. Special Training: _____
- D. List any physical or mental disabilities which you wish to reveal and which affect your earning capacity or living expenses:

- E. Number of Dependents: _____

2. Income after taxes (monthly)

- A. If from employment, list your occupation and employer's name and address:

- B. Sources of income, if not from employment:

- C. My gross annual income for the past twelve months was: \$ _____
- D. Gross Income (monthly): \$ _____
- E. Taxes Deducted (monthly): _____

Federal Tax \$ _____

State Tax \$ _____

Social Security \$ _____

Medicare \$ _____

Other Taxes (specify) _____ \$ _____

Total Taxes Deducted \$ _____

F. Total Income After Taxes (subtract 2(e) from 2(d)): \$ _____

G. If any other member of your household is employed, list occupation and name and address of their employer and monthly income after taxes:

3. Net Income (monthly)

A. Income After Taxes

B. Expenses (monthly):

Rent or Mortgage \$ _____	Uninsured Medical Expenses \$ _____
Food \$ _____	Child Care \$ _____
Electricity \$ _____	Education Expenses for Children \$ _____
Gas \$ _____	Child Support \$ _____
Oil \$ _____	Clothing \$ _____
Water \$ _____	Laundry/Cleaning \$ _____
Telephone \$ _____	Car Insurance \$ _____
Health Insurance \$ _____	Transportation Expenses \$ _____

Other (specify): _____

Total Expenses \$ _____

C. Income After Taxes Minus Expenses (monthly) (subtract 3(b) from 3(a)): \$ _____

4. Assets

A. Own Home? Yes No Market Value \$ _____ Balance Owed \$ _____

B. Own Car? Yes No Year & Make _____

Market Value \$_____ Balance Owed \$ _____

C. Bank Accounts (specify type and balance) _____

D. Other Property including Real Estate (specify type and value) _____

5. Debts

A. Specify: _____

6. Miscellaneous

A. Other facts which may be relevant to your ability to pay fees and costs?

Signed under the penalties of perjury: Signature x _____

Type/Printed Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Date signed: _____

By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March, 2003

SUPREME JUDICIAL COURT
BOSTON, MASSACHUSETTS 02108

MARGARET H. MARSHALL
CHIEF JUSTICE

TO: Chief Justice Armstrong
Chief Justice Dortch-Okara
Chief Justice DeVecchio
Chief Justice Dunphy
Chief Justice Grace
Chief Justice Kyriakakis
Chief Justice Scheier
Chief Justice Zoll
Acting Chief Justice Johnson

FROM: Chief Justice Marshall 

DATE: March 25 2003

RE: Affidavit of Indigency and Related Forms

Pursuant to G. L. c. 261, § 27B, I hereby prescribe the enclosed forms for requesting waiver, substitution or payment by the Commonwealth of fees and costs. Effective on Monday, May 5, 2003, these forms supersede the affidavit of indigency forms currently in use.

Enclosed are the following:

- 1) Affidavit of Indigency
- 2) Supplement to Affidavit of Indigency
- 3) Court's Determination Regarding Fees and Costs
- 4) Inmate's Affidavit of Indigency
- 5) Request for Payment to be Withdrawn from Inmate's Account
- 6) Order to Commissioner of Correction or County Sheriff to Provide Inmate Account Information
- 7) Instructions for Users
- 8) Instruction to Courts

Note that the inmate forms, pursuant to G. L. c. 261, § 29, and instructions are new. The confidentiality provisions have been revised to provide that the financial information in the

affidavit of indigency shall not, except by special order of the court, be disclosed to anyone other than authorized court personnel, the applicant, the applicant's counsel or anyone authorized in writing by the applicant.

Under the decision in Underwood v. Appeals Court, 429 Mass. 1017 (1998), the court may order payment of partial fees in appropriate cases. However, consistent with the procedure in G. L. c. 261, §§27C(2) and (3), a determination to order partial payment should be made only by a judge. See "Instructions to Courts."

If an applicant checks (B) on the affidavit of indigency, he or she need only provide the information requested in (B) without any need to fill out the supplement to the affidavit of indigency. This procedure is the same as on the current affidavit.

Note that G. L. c. 261, § 27A refers to public assistance under aid to families with dependent children, the emergency aid for elder and disabled residents or veterans' benefits programs, or assistance under Title XVI of the Social Security Act or the medicaid program, 42 USC 1396, et seq. The terminology on the form has been changed to reflect current programs. G. L. c. 261, § 27A refers to the current poverty threshold annually established by the Community Services Administration pursuant to § 625 of the Economic Opportunity Act. Since 1981, the annual update of the poverty income guidelines, formerly issued by the Community Services Administration, has been issued by the Department of Health and Human Services. See Annual Update of the Poverty Income Guidelines, Vol. 68, No. 26 Fed. Reg. 6456 (February 7, 2003).

Please distribute these forms to all clerks, registers or recorders in your court so that they are ready to begin using them on May 5, 2003.

INSTRUCTIONS TO COURTS ON THE ADMINISTRATION OF THE INDIGENT COURT COSTS LAW

Accompanying these Instructions are revised forms to be effective May 5, 2003 under the state's Indigent Court Costs Law, c.261, §§27A - G and 29. Please note that, for the first time, this court has included instructions to applicants as part of the Affidavit of Indigency forms. Previously, each Trial Court Department was authorized to draft its own instructions, if any. It is important to give the same information to users so that the forms and procedures will be more easily understood. Trial Court Departments can supplement or modify these Instructions, as appropriate to their particular Departments, so long as the changes are not inconsistent with these Instructions. If a court department does so, it should submit its changes to the Chief Justice of the Supreme Judicial Court for quick review before they go into effect.

These are some comments that we make on the Indigent Court Costs Statute and forms, in order to provide guidance to you in administering this law.

1) Partial Fees May Be Permitted - In the decision of Underwood v. Appeals Court, 427 Mass. 1012 (1998), this court decided that the statute authorizes the assessment of a partial fee as a substitute for complete waiver of the fee or state payment of the cost. The judge should exercise reasonable discretion, considering the totality of the applicant's economic circumstances, before ordering payment of a partial fee.

2) Instructions on Use of Inmate Forms - Included in the packet is a separate set of forms designed to meet requirements under recent amendments to the law pertaining to inmate filings. These forms are for use only when the applicant: (1) is currently confined in a correctional institution; (2) has brought suit against a state or county agency, official or employee (except for a petition for relief from restraint under G.L. c. 248, §1); and (3) seeks waiver of "normal" (as opposed to "extra") fees and costs. See G.L. c. 261, § 29. If any of these three criteria are not met, the applicant and court personnel should use the general forms.

The special inmate forms include an affidavit of indigency form that requires the prisoner to supply the specific information required by § 29(b). The form incorporates a preamble that notifies inmates of the particular consequences of intentionally filing an affidavit that is false or is designed to abuse the judicial process, as set forth in § 29(f). Once the action is filed, the court must, under § 29(a), order the custodial official to produce a printout of the plaintiff/inmate's institutional canteen and savings accounts within 30 days so that the inmate's resources can be assessed. The packet includes a form order to the Commissioner of Correction or county sheriff for this purpose. The court may tentatively approve an inmate's application to permit service of process while the order to the correctional administrator and further review is pending. § 29(e). If, upon review of the inmate's application and account information, the court determines that the inmate is indigent, it may waive fees entirely; require a one-time partial payment toward the fees

and costs; or order an initial payment and subsequent installment payments. § 29(d). The form notice of waiver sets forth these options and notifies the prisoner of his/her obligation under § 29(d)(3) to forward the court's order to the appropriate custodial official. The form also permits the inmate to authorize the custodian to debit and send to the court the payments that are ordered.

3) Acceptance of Court Papers Accompanying Filing Fee Waiver Requests -

Sometimes applicants for waiver of filing fees present papers on a day which is within a statute of limitation or other time deadline (such as an appeal from a state agency adjudicatory hearing decision). As the statute states (c.261, §27C(1)), all papers offered for filing must be dated and accepted when they are first presented, and must be processed without delay. This means that no papers may be rejected because the filer has not yet obtained waiver of the filing fee. Rather, if the filing fee is later waived, the date of filing is the date of the original presentation of the papers.

4) Duties of Clerk - The statute requires that applications for waiver or state payment of normal fees or costs under Categories A (recipients of certain means-tested public benefit programs) and B (income is below 125% of the federal poverty line) must be approved by the Clerk (or the Assistant Clerk) without delay so long as they are regular on their face and raise no significant question about whether the applicant is indigent. G. L. c. 261, 27C(2). Except in prisoner cases, such papers should not be referred to a judge for decision, nor should further information be requested if the papers are properly completed. Also, the Clerk should not require an applicant to complete the Supplement to the Affidavit of Indigency form unless he or she is applying under Category C.

Applications under Category C, which requires the applicant to complete a Supplement to Affidavit of Indigency, can frequently be decided at the Clerk's level, based upon the information submitted. But if there are serious questions about whether the applicant meets the Category C standard, the application should be referred to a judge for decision.

5) Confidentiality of Papers - All papers relating to requests under the Indigent Court Costs Law are confidential and not available to the public. The only exceptions are that they are available to authorized court personnel and to the applicant and the applicant's attorney. They are not available to any other party or their authorized representative without a specific court order. If an authorized representative (other than an attorney) for an applicant seeks to review or to obtain copies of any of these documents, that person should present a written consent by the applicant before access is permitted.

6) Appeals - G. L. c. 261, § 27C(3) provides that if the affidavit is not regular on its face or does not indicate the applicant is indigent, the clerk or register shall bring it to the attention of a judge. Any denial or other decision by a Judge can be appealed to an appellate court under the procedures provided for in the statutes or rules. G. L. c. 261, § 27D.

7) Posting of Federal Poverty Line Information - A chart showing 125% of the current federal standards of poverty for different sized families must be posted in each local court in a

place where litigants are likely to see it. These standards are updated by the federal government each year in February or March, and so courts should be sure that they have a current schedule posted. Each year, shortly after the federal change, the Supreme Judicial Court staff mails out a copy of the new schedule. If the schedule is not posted in the courthouse, applicants who need to review it are instructed to ask for a copy at the Clerk's office.

8) **Estimated Costs** - Applicants are asked to give their best estimates of the costs of the services whose waiver or state payment they are requesting. If they do not know the cost, they are asked to provide a reasonable description of what they need. Most applicants will not know the actual costs of many of these services. Therefore, courts should approve otherwise appropriate applications for waiver or state payment and insert in the approval the actual or estimated amount of the fee or service, as it is known to the court.