

IN FORMA PAUPERIS PROCEDURE FOR SELF-REPRESENTED FAMILY LAW CASES

Mississippi Law gives citizens the ability to have their fees or costs waived if they are unable to pay due to their poverty.
In Forma Pauperis is a Latin term that means in the form of a pauper.

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Plaintiff files Petition and accompanying Pauper's Affidavit. The affidavit shall state:

"I, _____, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit."

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Clerk shall file the case and issue a Cause Number pursuant to Miss. Code Ann. § 11-1-5 and M.R.C.P. Rule 79.

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At this point, **EITHER:**

a. **Plaintiff proceeds *In Forma Pauperis*** (without payment of fees or costs) **OR**

b. **IF the Clerk (or the Judge or any party to the case) believes the plaintiff may not be indigent:**

- 1) The Clerk issues a Notice of Show Cause Hearing for the Judge to determine whether the plaintiff may proceed *In Forma Pauperis*. The Clerk provides the plaintiff with a copy of the Notice showing the time, date and location for hearing.
- 2) The Clerk also provides a Financial Statement approved by the Court for the plaintiff to complete and bring to the Show Cause Hearing, which will include the plaintiff's income, assets and liabilities.
- 3) At the Show Cause Hearing, the Judge determines, on the record, whether the plaintiff may proceed *In Forma Pauperis*. If *In Forma Pauperis* status is denied, the Judge will issue an Order stating the reasons for the denial and may dismiss the case without prejudice. **The Judge or any party, upon belief that the plaintiff's allegation of poverty might be untrue, may request a Show Cause Hearing to determine whether the plaintiff is entitled to proceed *In Forma Pauperis*.**

Mississippi Statutes and Rules governing *In Forma Pauperis*

Miss. Code Ann. § 11-53-17. Indigent Action without Security.

A citizen may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing [the pauper's affidavit as written in the first point on this page].

Miss. Code Ann. § 11-53-19. Untrue allegation of poverty, dismissal.

The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue.

Miss. Code Ann. § 11-53-21. Judgment for costs against poor persons.

In cases commenced or continued on an affidavit of poverty, the officers of the court shall perform all the duties required in the prosecution of the suit, and the witnesses shall attend until released; but in the case of failure to prosecute his suit to effect, judgment shall be given against the plaintiff for costs, and execution may be issued as in other cases.

M.R.C.P. Rule 3 Commencement of Action.

(c) Proceeding In Forma Pauperis. A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.

Rule 3 comment: Rule 3(c) allows indigents to sue without depositing security for costs; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action.

THE FINAL DECISION FOR ALLOWING IFP STATUS IS WITHIN THE JUDGE'S DISCRETION BASED ON THE FACTS PRESENTED IN A PARTICULAR CASE.

Family Law Implicates Fundamental Rights. This process could be used for all cases in Chancery Court, but it is especially recommended for family law cases, which implicate the fundamental rights of the parties. See *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that a state could not deny a divorce to a married couple based on their inability to pay approximately \$60 in court costs because there were constitutionally protected “fundamental interests” at stake). Arguably, this would extend to all family law cases, such as child custody, guardianships, termination of parental rights, and adoptions.

SUGGESTED CONSIDERATIONS WHEN MAKING AN ON THE RECORD IFP DETERMINATION

1) Make an Individualized Assessment.

- a) If the Pauper's Affidavit is challenged, determine the plaintiff's income. The Judge should make an individualized assessment of the plaintiff's ability to pay, based on **the totality of the circumstances** including, but not limited to, the plaintiff's:
 - disposable income (consider only the income earned by the plaintiff and the financial resources available to the plaintiff, not the income of other household residents (*e.g.*, parents or siblings)),
 - financial obligations and liquid assets, and
 - cost of living in the county of residence.
- b) The Judge may consider the **general standard of living in counties that have the lowest average per capita income** and elect to use a percentage of the Federal Poverty Guidelines as a factor for determining indigence. The Federal Poverty Guidelines may be found at <https://aspe.hhs.gov/2019-poverty-guidelines>.
- c) At the Show Cause Hearing, the Judge should make **specific factual findings** as to why that person should or should not be entitled to proceed *In Forma Pauperis*.
- d) The Judge should consider ordering all financial documents be filed under seal.

2) Suggested Considerations for Determining Indigence.

The Judge may consider granting *In Forma Pauperis* status when the plaintiff currently:

- a) Has income at or below 100% of the Federal Poverty Guidelines.
- b) Is receiving free legal services through:
 - North Mississippi Rural Legal Services or Mississippi Center for Legal Services
 - Mississippi Volunteer Lawyers Project
 - A civil legal clinic operated by either School of Law in Mississippi
 - Mississippi Center for Justice
 - Southern Poverty Law Center
- c) Has a contract for federally subsidized housing.
- d) Is eligible for and receives SNAP benefits.
- e) Is enrolled in Medicaid.
- f) Is receiving pro bono legal services from a licensed attorney based on a referral from Legal Services or MVLP.
- g) Is qualified for and receives Supplemental Security Income Disability Benefits for the Disabled, Blind, and Elderly.