

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
DOMESTIC RELATIONS DIVISION**

GENERAL ORDER: 05 D 1

**SUBJECT: FORM FOR APPLICATION, AFFIDAVIT AND ORDER TO SUE OR
DEFEND AS AN INDIGENT PERSON (REVISED)**

IT IS HEREBY ORDERED THAT:

Effective January 18, 2005, this form for Application, Affidavit and Order to Sue or Defend as an Indigent Person pursuant to Illinois Supreme Court Rule 298 and 735 ILCS 5/5-105 is authorized for use in the Domestic Relations Division. The Order incorporated in this Application shall only take effect upon the filing of a proper petition with the Clerk of the Circuit Court of Cook County. This form shall be furnished by the Clerk of the Circuit Court to the Bar and the general public in limited amounts. Any word-processor form consistent with and in the form of this Application, Affidavit and Order to Sue or Defend as an Indigent Person is acceptable.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

	}	
Plaintiff/Petitioner		No. _____
v.		
		Calendar _____
Defendant/Respondent		

ORDER

This matter coming before the Court on an Application and Affidavit to Sue or Defend as an Indigent Person, the Court being fully advised in the premises, IT IS HEREBY ORDERED;

Pursuant to Supreme Court Rule 298 and 735 ILCS 5/5-105:

- The applicant is permitted to sue or defend without payment or fees, costs or charges. The applicant may be ordered to pay any portion of the waived fees or costs out of a settlement or judgment resulting from this action.
- The application is denied for the following reason(s): _____

- Payment shall be: made by _____ (date) OR deferred until _____ (date) OR other _____

ENTERED:

Dated: _____, _____

Judge

Judge's No.

735 ILCS 5/5-105.5

**INFORMATION SHEET FOR
LEAVE TO SUE OR DEFEND AS AN INDIGENT PERSON**

(a) As used in this section:

(1) "*Fees, costs, and charges*" means payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: filing fees; appearances fees; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; jury demand fees; charges for participation in, or attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; charges for certified copies of court documents; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action.

2) "*Indigent person*" means any person who meets one or more of the following criteria:

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

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

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of fees, costs, and charges and whose payment of those fees, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5-105.5 of this Code. [This states that "indigent person" means a person whose income is 125% or less of the current official federal poverty guidelines or who is otherwise eligible to receive civil legal services under the Legal Services Corporation Act of 1974. (42 U.S.C.A. Sec. 2996 et. seq.)]

(b) On the application of any person, before or after the commencement of an action, a court, on finding that the applicant is an indigent person, shall grant the applicant leave to sue or defend the action without payment of the fees, costs and charges of the action.

(c) An application for leave to sue or defend an action as an indigent person shall be in writing and supported by the affidavit of the applicant or, if the applicant is a minor or an incompetent adult, by the affidavit of another person having knowledge of the facts. The contents of the affidavit shall be established by Supreme Court Rule.

(d) The court shall rule on applications under this Section in a timely manner based on information contained in the application unless the court, in its discretion, requires the applicant to personally appear to explain or clarify information contained in the application. If the court finds that the applicant is an indigent person, the court shall enter an order permitting the applicant to sue or defend without payment of fees, costs or charges. If the application is denied, the court shall enter an order to that effect stating the specific reasons for the denial. The clerk of the court shall promptly mail or deliver a copy of the order to the applicant.

(e) The clerk of the court shall not refuse to accept and file any complaint, appearance, or other paper presented by the applicant if accompanied by an application to sue or defend in forma pauperis, and those papers shall be considered filed on the date the application is presented. If the application is denied, the order shall state a date certain by which the necessary fees, costs, and charges must be paid. The court, for good cause shown, may allow an applicant whose application is denied to defer payment of fees, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order. The court may dismiss the claims or defenses of any party failing to pay the fees, costs, or charges within the time and in the manner ordered by the court. A determination concerning an application to sue or defend in forma pauperis shall not be construed as a ruling on the merits.

(f) The court may order an indigent person to pay all or a portion of the fees, costs, or charges waived pursuant to this Section out of monies recovered by the indigent person pursuant to a judgment or settlement resulting from the civil action. However, nothing in this Section shall be construed to limit the authority of a court to order another party to the action to pay the fees, costs, or charges of the action.

(g) A court, in its discretion, may appoint counsel to represent an indigent person, and that counsel shall perform his or her duties without fees, charges, or reward.

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

(i) The provisions of this Section are severable under Section 1.31 the Statute on Statutes. See (5 ILCS 70/1.31)

Civil/Chancery/Domestic Relations/Law Codes

3387 - Application to Sue or Defend as Indigent Person Petitioner - Filed
3388 - Petition for Refund of Fees Collected in Error - Filed
3487 - Application to Sue or Defend as Indigent Person Respondent - Filed
3388 - Application to Sue or Defend as Indigent Person Co-Petitioner - Filed
4385 - Order Deferral of Fee Payment - Allowed
4386 - Order to Pay Fees - Allowed
4387 - Sue or Defend as Indigent - Allowed
4388 - Indigent Person Application - Denied/Billing Allowed
4670 - Order Fees Waived - Allowed
5387 - Sue or Defend as Indigent Person - Denied

Criminal Codes

876 - Petition to Defend as an Indigent Person - Filed
878 - Petition/Waiver to Defend as an Indigent Person - Granted

Dated the 13th day of January, 2005. Effective January 18, 2005. This Order supersedes General Orders 03-D-2, 00-D-24, 94-D-1, 91-D-11, and 91-D-1. This Order shall be spread upon the records of this court and published.

ENTERED:


MOSHE JACOBUS
PRESIDING JUDGE
DOMESTIC RELATIONS DIVISION