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Supplement to
Directive # 03-17

TO: Hon. Carmen Messano
Assignment Judges
Hon. Joseph M. Andresini
Civil, Criminal, Family, General Equity and
Municipal Presiding Judges
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Division Managers (All Divisions)

FROM: Glenn A. Grant, J.A.D. 

SUBJECT: Fee Waiver Protocol Applicable to Directive #03-17 ("Fee Waivers Based on Indigence...")

DATE: March 23, 2018

This Supplement to Directive #03-17 sets forth changes to the procedures for indigent applications for fee waivers requested pursuant to Rule 1:13-2. The Supreme Court, by order dated April 5, 2017, supplemented and relaxed Rule 1:13-2 to establish minimum eligibility requirements for indigence based on (a) a litigant's household income limited to 150% of the federal poverty level and (b) a limit on assets of \$2,500. That change in practice was effectuated by Directive #03-17 ("Fee Waivers Based on Indigence – Supreme Court Order; Fee Waiver Application Form for All Courts"). A September 25, 2017 Supplement to the Directive clarified the policy regarding partial fee waivers.

This Supplement promulgates a protocol that details the procedures for all courts for filing and processing a request for fee waiver based on indigence. The protocol requires all applicants for waiver of court fees and/or copy fees to complete the revised form packet available on the Judiciary's website. Additionally, the protocol provides (a) that the fee waiver application applies only to the specific case in which the application is filed and (b) that the duration of a granted fee waiver application is one year after the date of judgment. If an approved fee waiver expires, the individual must submit a new application for resumption of the waiver.

Requests for fee waivers are not required in the following limited instances: (1) for defendants eligible for representation by a public defender under the 5A application, (2) for low-income individuals who are represented by Legal Services of New Jersey (LSNJ), a regional Legal Services program, or pro bono attorneys who accept clients from these service providers and (3) for individuals represented by other public interest or legal services organizations and law school clinical or pro bono programs that have been certified under R. 1:21-11. Additionally, transcript fees are not covered by this fee waiver application and require a separate application to the court.

Questions or concerns regarding this Supplement to Directive #03-17 or about indigency based fee waivers in general may be directed to Michelle M. Smith, Clerk of the Superior Court at michelle.smith@njcourts.gov or 609-815-2900 ext. 54200.

Attachment (Protocol)

c: Chief Justice Stuart Rabner
Hon. Jack Sabatino
Steven D. Bonville, Chief of Staff
Michelle M. Smith, Superior Court Clerk
Melaney S. Payne, Special Assistant
Ann Marie Fleury, Special Assistant

Protocol for Fee Waiver Applications Based on Indigence – All Courts

**Promulgated by March 23, 2018
Supplement to Directive #03-17**

Introduction and Background

This protocol sets out the procedures for the filing and handling of fee waiver applications governed by Rule 1:13-2 ("Indigency"), as supplemented and relaxed by the Supreme Court by order dated April 5, 2017. It is being issued as a Supplement to Directive #03-17, which directive promulgated the fee waiver policy effectuated by the Court's order. An earlier Supplement to the Directive clarified the policy as to partial fee waivers (Supplement dated September 25, 2017). This protocol governs all requests for fee waivers filed in the Supreme Court, Appellate Division, Superior Court, Tax Court, and Municipal Courts. Orders for fee waivers are limited to court filing fees and record copy fees associated with the listed matter. Fees such as sanctions, reinstatement fees and application fees are not subject to the fee waiver order and are not waived, unless otherwise permissible by court order, statute or court rule. Fee waiver orders expire one year after the final disposition of the matter (e.g., judgment, dismissal, settlement). Additionally, transcript fees are not waived by the fee waiver order. An individual seeking a waiver of transcript fees must make a separate application to the court for that relief.

Completed forms seeking fee waivers in the Supreme Court, Appellate Division, and Tax Court are to be submitted to the respective Clerk's Office for docketing. For fee waivers being sought for Superior Court matters, the completed form must be submitted for docketing in the appropriate Division Manager's Office (based on the type of case) in the county where the matter is or is going to be filed. For any fee waivers being sought for Municipal Court matters, the completed form must be submitted to the Municipal Court Administrator for the particular Municipal Court. The standard fee waiver application form is at http://www.njcourts.gov/forms/11208_filingfeewaiver.pdf.

Applicability

Pursuant to Directive # 03-17 ("Fee Waivers Based on Indigence – Supreme Court Order; Fee Waiver Application Form for All Courts"), court filing and/or copy fees may be waived "by reason of poverty" for litigants "(a) whose household income does not exceed 150% of the federal poverty level (with that level based on the number of members of the individual's household) and (b) who have no more than \$2,500 in liquid assets, subject to completion and submission of a uniform fee waiver request form." Eligibility for fee waivers shall be determined based on the applicant meeting the above income standards by providing the court with the required proof as indicated in the application.

This protocol does not apply to (1) defendants eligible for representation by a public defender through the 5A application process; (2) low-income individuals who are

represented by Legal Services of New Jersey (LSNJ), a regional Legal Services program, or pro bono attorneys who accept clients from these service providers; or (3) individuals represented by other public interest or legal services organizations and law school clinical or pro bono programs that have been certified under Rule 1:21-11.

Where an applicant makes a request for a fee waiver, that application must be granted or denied in full. Partial fee waivers, pursuant to N.J.S.A. 30:4-16-3, are not permitted. Applications for fee waivers are only applicable for the case where the applicant requested the fee waiver. A separate application is required for each additional matter that the applicant has pending with the court.

Filing Procedure – Pro Se or Where No Electronic System Available

Where an approved Judiciary electronic filing system, such as eCourts, is not available for the applicant to file electronically, the fee waiver application must be submitted on paper. The application and order must be maintained in accordance with the appropriate Judiciary retention schedule (see Directive # 03-01) and are considered public records, unless otherwise excluded from public access under Rule 1:38 (“Public Access to Court Records and Administrative Records”). Financial documents submitted in support of the fee waiver application shall be returned to the filing party and are not subject to public access pursuant to Rule 1:38-3.

To ensure consistency with electronic filing, where an applicant seeks to file a fee waiver application with an initiating document (e.g., complaint, order to show cause with verified complaint) on paper, a docket number shall be generated and that application is to be uploaded to eCourts, where applicable. Where an applicant seeks to file any other document for which there is a fee (e.g., answer, warrant, writ) on paper, the fee waiver application shall be filed and uploaded into eCourts, where applicable. The request for fee waiver shall be recorded on the court’s docket

If a fee waiver is granted, the signed order and initiating or other fee documents shall also be filed and entered (and uploaded to the electronic filing system, where applicable). All other filing fees and copy fees shall be waived in accordance with this protocol.

If the fee waiver application is denied, the court shall enter the denying order onto the docket and upload it into eCourts, where applicable. The court shall also issue a deficiency notice pursuant to Rule 1:5-6 (“Filing”) and allow ten (10) calendar days for the filing party to remit the required fee in order for the document to have the received date as the filed date. For initiating documents, if that fee is not received within fifteen (15) calendar days of the issuance of the deficiency letter, the Clerk or other approved designee shall administratively dismiss the case without prejudice.

Filing Procedure -- Electronic

Where an approved judiciary electronic filing system, such as eCourts, is available for the applicant to file electronically, the fee waiver application must be processed and maintained electronically. Only the application is to be submitted into the electronic filing system.

Fee waiver applications and orders are public records, and unless otherwise excluded from public access pursuant to Rule 1:38, copies should be provided upon request. Financial documents in support of the fee waiver application shall be returned to the filing party and are not subject to public access pursuant to Rule 1:38-3.

Where an applicant seeks to electronically file a fee waiver application for an initiating document (e.g., complaint, order to show cause with verified complaint), a docket number shall be generated. Where an applicant seeks to file any other document for which there is a fee (e.g., answer, objection, warrant, writ, copy request) that application shall be submitted to eCourts. The request for fee waiver shall also be recorded on the Court's docket.

If a fee waiver is granted, the order shall be entered into the docket and uploaded to eCourts. Upon receipt of the order through eCourts, the applicant will electronically file the initiating document or other fee document. All other filing fees and copy fees shall be waived in accordance with this protocol.

If the fee waiver application is denied, the denying order shall be entered into the docket and uploaded to eCourts. The court shall issue a deficiency notice pursuant to Rule 1:5-6 ("Filing") and allow ten (10) calendar days for the filing party to remit the required fee in order for the received date to be reflected as the filed date. For initiating documents, if that fee is not received within fifteen (15) calendar days of the issuance of the deficiency letter, the Clerk or other approved designee shall administratively dismiss the case without prejudice.

Financial Proofs

The fee waiver application requires the submission of attachments that detail the financial circumstance of the filing party. However, **no financial documents should be uploaded to the electronic filing system**. All financial documents submitted in support of the application should be directly provided to the judge on paper and must be returned to the litigant once the court has acted on the application and the waiver has either been granted or denied.

If the filing party does not have the necessary financial proofs, the court may substitute other relevant financial documents or information necessary to consider the application. Those documents shall also be returned to the filing party once the court has made a determination on the application.

Duration of Approved Fee Waivers

The fee waiver order should reflect that the waiver expires one year after the final disposition of a case/judgment. If filed on appeal, the provisions of Rule 2:7-4 shall apply. Once the fee waiver has expired, the litigant is required to file another request for any further waiver of fees in that matter.

Submission of Filing Fees if Waiver Application Denied

If the court denies the fee waiver application, the litigant will be responsible for remitting the appropriate filing fee, subject to the provisions of Rule 1:5-6.

Refunds of Fees Paid Prior to Court Approval of Fee Waiver

An approved fee waiver will not apply retroactively to prior filings unless specifically so ordered by the court. Refunds of filing fees are governed and limited by Directive #03-16 ("Limitations on Refunds of Court Filings Fees Where There is No Court Order") issued on June 7, 2016.

Closing

Questions or concerns regarding fee waivers or this protocol may be directed to Michelle M. Smith, Clerk of the Superior Court, at 609-815-2900 ext. 54200 or michelle.smith@njcourts.gov.