



Conclusion

The United States judicial system, including the courts of Louisiana, grants all persons the privilege of receiving access to justice regardless of whether the litigant is impoverished. The legislature enacted the IFP provisions of Louisiana's Code of Civil Procedure to ensure this privilege for its citizens. This information is intended to help practitioners, the courts and clerks of court avoid common IFP challenges and promote access to justice for all.



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Access to Justice:



in forma pauperis Basics*

“[A]n individual’s privilege to litigate his claim in our courts is not regarded as a luxury. Rather, it is regarded as a privilege granted him in the interest of individual justice to him, and in the interest of a judicial system designed to provide justice for all.” **

Introduction

The guaranty that a civil litigant in necessitous circumstances may proceed without the pre-payment of court costs, also known as proceeding IFP, is entrenched in both the federal and state Constitutions. It is also codified in Section 1915 of the United States Code and Articles 5181 through 5188 of the Louisiana Code of Civil Procedure. The Louisiana Supreme Court has labeled IFP a “privilege” which assure “justice for all.” Unfortunately, in an age of shrinking court funding, some challenges exist in the IFP litigation process. The best way to meet these challenges and assure equal access to the justice system is to understand the applicable laws and procedures.

* This brochure was prepared by the Louisiana State Bar Association’s Access to Justice Program and adapted from the white paper titled *Access to Justice: Common Procedural Issues Confronted by the In Forma Pauperis Practitioner* prepared by Ashley P. Gonzalez. Ms. Gonzalez is an Associate at King, Krebs & Jurgens, P.L.L.C and is a Louisiana Appleeed volunteer. Louisiana Appleeed is a nonprofit that recruits professional to donate pro bono time to solve problems at the systemic, or policy level. Their projects seek to increase access to justice, education and opportunity.

** Benjamin v. Nat’l Super Markets, Inc., 351 So. 2d 138, 141 (La. 1977).



Federal and State Statutory Authority to Litigate *In Forma Pauperis*

The traditions of IFP proceedings have their roots in the federal IFP statute and opinions of the Supreme Court of the United States. Like all other states in the union, Louisiana has authorized the commencement, prosecution or defense of judicial proceedings without pre-payment of court fees and costs.

Who is Entitled to Litigate *IFP*?

The Louisiana Code of Civil Procedure permits a litigant to proceed with a claim without pre-paying the costs related to such claim or furnishing a bond for such costs, if the litigant is “unable to pay the costs of court, because of his poverty and lack of means” as ordered by the court after submission of the litigant’s IFP affidavit.

What Must an *IFP* Applicant Submit to the Court?

Anyone wishing to proceed IFP will be required to apply for permission from the court and shall attach to the pleading or motion: (1) an affidavit stating that he or she is unable to pay court costs because of his or her poverty and lack of means together with any supporting documentation; and (2) an affidavit of a third person, other than the applicant’s attorney, that knows the applicant, his or her financial condition and believes that the applicant is unable to pay the costs. These documents are standardized under Louisiana District Court Rule 8.0 as the In Forma Pauperis Affidavit.

May a Litigant’s Request to Proceed *IFP* be Challenged?

An adverse party or the clerk of court may traverse the facts alleged in an IFP affidavit and challenge the IFP litigant’s request to exercise the privilege by a rule to show cause why the order of the court permitting the litigant to proceed IFP should not be rescinded.

What Services are Available to an *IFP* Litigant?

Article 5185 makes clear that an IFP litigant is entitled to the services required by law of a sheriff, clerk of court, court reporter, notary or other public officer in connection with the judicial proceeding. This includes, without limitation, the filing of pleadings and exhibits, the issuance of certificates, the certification of copies of notarial acts and public records, the issuance and service of subpoenas and process, the taking and transcribing of testimony, the issuance of judgments and the preparation of a record of appeal.

Who is Responsible for Payment of Costs?

If judgment is rendered in favor of the IFP litigant, the party against whom the judgment is rendered shall pay all costs incurred by the IFP party. Except as otherwise provided by Articles 1920 and 2164, if judgment is rendered against an IFP litigant, he or she shall be responsible for the payment of costs incurred in accordance with Article 5186 together with those recoverable by the adverse party.

A Brief Overview of *IFP* Law

The following are answers to frequently asked questions related to IFP litigation, with authority under Louisiana law:

- ◆ **Litigants granted IFP status are entitled to all services required by law, including but not limited to the filing of pleadings and certification of copies of judgments and other public records.** C.C.P. art. 5185.
- ◆ **An IFP litigant may file pleadings in a new suit even if there are outstanding court costs owed for a different case.** C.C.P. art. 5185.
- ◆ **It is improper to charge a successful IFP litigant with costs or require a successful IFP litigant to pay a portion of the costs associated with the IFP proceeding, including uncontested divorce cases.** C.C.P. art. 5186, 5188.
- ◆ **A litigant who has been allowed to proceed IFP is not required to pay court costs in advance or as they accrue.** C.C.P. art. 5181.
- ◆ **A successful IFP litigant is not responsible for costs associated with the IFP proceeding whenever an adverse party is cast with the costs.** C.C.P. art. 5186, 5188.
- ◆ **An IFP litigant is not required to pre-pay fees or costs associated with the services of an attorney appointed to represent an out of state defendant or for a curator.** C.C.P. art. 5091, 5096.
- ◆ **An IFP litigant is not required to post a bond for court costs.** La. R.S. 13:455.
- ◆ **An IFP litigant is entitled to a jury trial without the pre-payment of costs.** C.C.P. art. 5181 et seq.
- ◆ **If an IFP litigant submits documentation that s/he is receiving public assistance or has income below 125% of the poverty line, s/he is not required to complete the detailed income and expense schedule in question No. 9 of the Louisiana Supreme Court’s IFP Affidavit Form.** C.C.P. art. 5183.
- ◆ **Financial assistance of third parties to IFP litigant may not be considered in determining whether a litigant qualifies for IFP status.** *Fils v. Iberia, St. M. & E.R. CO.*, 82 So. 697, 700 (La. 1919).
- ◆ **Either the adverse party or the clerk of court may traverse an IFP affidavit.** C.C.P. art. 5184.
- ◆ **Local district courts may not impose greater obligations on a party seeking to proceed IFP than those contained in the Louisiana Code of Civil Procedure.** C.C.P. art. 5183
- ◆ **Unless rescinded, IFP status carries over on appeal.** C.C.P. art. 5185.
- ◆ **Costs may be cast against parties in suit or action, and there is no authority to hold an IFP litigant’s attorney liable for the costs of his/her client.** C.C.P. art. 5186, 5188.