

MAINE STATE LEGISLATURE

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(New Title)
New Draft of: S. P. 356, L. D. 1052

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1779

S. P. 606 In Senate, May 25, 1971
Reported by Majority from Committee on Judiciary and printed under
Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Provide for Use of the Courts by Indigent Persons.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 4, c. 25, additional. Title 4 of the Revised Statutes is amended by adding a new chapter 25, to read as follows:

CHAPTER 25

USE OF THE COURTS BY INDIGENT PERSONS

§ 1101. Court order

Every indigent person, who may have a cause of action against another or is a defendant in a suit, may petition the court in which the action is pending, or in which it is intended to be brought, or to which an appeal has been or will be taken, for leave to proceed as an indigent person.

The petition, which shall be verified by the indigent person, shall set forth the amount and sources of his income and list his property with its value; that he is unable to pay the costs, fees and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient facts so that the merit of his contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought, and, if so, whether every such person is unable to pay such costs, fees and expenses.

For the purposes of this chapter, an attorney representing an indigent person shall not be considered to be beneficially interested in the recovery by

reason of any contingent fee arrangement he may have with the indigent person.

An executor, administrator or other representative may petition for such leave on behalf of a deceased, infant or incompetent indigent person.

If the court to which such petition shall be presented is satisfied of the truth of the facts alleged in the petition that the applicant is an indigent person, and that the applicant has a cause of action, defense or basis for appeal, which is not frivolous, it shall order that said indigent person be allowed to proceed as an indigent person.

An indigent person shall not be prevented from proceeding as an indigent person by reason of his being liable for the costs of another suit.

§ 1102. Procedure

After the court has issued an order pursuant to section 1101, a person allowed to proceed as an indigent person shall receive the services of the courts, sheriffs, clerks and constables without charge.

After the court has issued an order pursuant to section 1101 and the indigent person:

1. Service of process. Obtains an order from the court specially appointing some person other than a sheriff or his deputy or a constable to make service of process, or
2. Service by publication. Obtains an order for service by publication, or
3. Service by registered or certified mail. Obtains service of process by registered or certified mail; the expenses incurred in making such service shall be a county charge, after a bill for the services rendered is presented to and approved by the court that granted leave to proceed as an indigent person.

After the court has issued an order pursuant to section 1101, witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases. Witness fees and costs of serving subpoenas shall be a county charge.

After the court has issued an order pursuant to section 1101 and a person is allowed to proceed as an indigent person on appeal, the clerk of courts, within 2 days after the filing of said order with him, shall notify the official court reporter, who shall make and certify 2 typewritten transcripts of the stenographic minutes of said trial or hearing and shall deliver one of said transcripts to the indigent person or his attorney, and file the other with the clerk of courts.

The expense of such transcripts shall be a county charge, payable to the reporter out of the court fund upon the certificate of the judge entering the order and such indigent person shall not be required to furnish an undertaking for costs.

After the court has issued an order pursuant to section 1101, a person allowed to proceed as an indigent person shall not be liable for the payment

of any costs or fees unless a recovery by judgment or by settlement is had in his favor, in which event he shall be awarded costs and the court shall direct him to pay out of such recovery or settlement, all or part of the costs and fees.

After the court has issued an order pursuant to section 1101 any recovery by judgment or by settlement had in favor of an indigent person proceeding pursuant to such order shall be paid to the clerk of the court in which the order permitting the person to proceed as an indigent person was entered, to await distribution pursuant to court order. The court shall order distribution within 14 days after the clerk receives the recovery or settlement.

The court, in its order allowing a person to proceed as an indigent person, may assign an attorney to represent that indigent person and then compensate him, which compensation shall be a county charge. If a recovery by judgment or by settlement is had, the court shall direct the indigent person to pay out of the recovery a reasonable sum for the services and expenses of his attorney.

§ 1103. Annulment

If a person ordered to be allowed to proceed as an indigent person is guilty of any improper conduct in his litigation of the suit, or of any willful and unnecessary delay, the court may, in its discretion, annul the order allowing him to proceed as an indigent person. Such annulment shall be prospective only.

§ 1104. Exceptions

This chapter shall not apply to post conviction habeas corpus instituted under Title 14, sections 5501 to 5546; criminal charges brought against an indigent person; nor to appeals in probate matters where attorney fees will be paid from the estate.

STATEMENT OF FACT

The purpose of this Bill is to change the wording "poor" to "indigent," to add witness fees and costs, to clarify contingent fee arrangements, to include exceptions to this Bill, to add specifically that the court must make a determination of indigency and to cover other sections regarding costs.