

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1005

H. P. 771

House of Representatives, February 21, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Perkins of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Provide for Use of the Courts by Poor 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 POOR PERSONS

§ 1101. Court order

Every poor 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 a poor person.

The petition, which shall be verified by the poor 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.

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

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

A poor person shall not be prevented from proceeding as a poor 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 a poor 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 poor 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 paid by the municipality or town wherein the poor person resides; and if he resides in an unorganized place, by the State, after a bill for the services rendered is presented to and approved by the court that granted leave to proceed as a poor 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.

After the court has issued an order pursuant to section 1101 and a person is allowed to proceed as a poor 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 poor 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 poor 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 a poor 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 the court may direct him to pay out of such recovery or settlement, all or part of the costs and fees, and any sum expended by the municipality, town or State under this section.

After the court has issued an order pursuant to section 1101, any recovery by judgment or by settlement had in favor of a poor 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 a poor 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 a poor person, may assign an attorney to represent that poor person. If a recovery by judgment or by settlement is had, the court may direct the poor 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 a poor 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 a poor person. Such annulment shall be prospective only.

STATEMENT OF FACT

The intent of this Act is to provide that the use of the court system of this State be barred to no one because he is financially unable to pay the costs, fees and expenses required for their use. The proposed legislation would establish a court procedure whereby a poor litigant would be able to obtain a court order allowing him to proceed as a poor person, and it then establishes guidelines as to the effect and operation of this court order, and the eventual recovery of fees and costs in certain situations.