

ASSEMBLY BILL NO. 107—ASSEMBLYMAN YEAGER

FEBRUARY 10, 2021

Referred to Committee on Judiciary

**SUMMARY**—Revises the procedure for determining whether a person may prosecute or defend a civil action without paying costs. (BDR 2-564)

**FISCAL NOTE:** Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to civil actions; revising the procedure for determining whether a person may prosecute or defend a civil action without paying costs; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that any person who desires to prosecute or defend a civil action may: (1) file an affidavit with the court alleging that he or she is unable to prosecute or defend the action because he or she is unable to pay the costs of prosecuting or defending the action; or (2) submit a statement or otherwise indicate to the court that he or she is a client of a program for legal aid. If the court is satisfied that a person who files such an affidavit is unable to pay the costs of prosecuting or defending the action or if the court finds that a person is a client of a program for legal aid, the court must order the clerk of the court to allow the person to commence or defend the action without costs and to file or issue any necessary writ, process, pleading or paper without charge. The court must also require that service of documents be made without charge. (NRS 12.015)

This bill revises this procedure to instead: (1) require a person who wishes to prosecute or defend a civil action without paying costs to file an application to proceed as an indigent litigant; and (2) establish certain criteria for the court to use in determining whether to grant the application to proceed as an indigent litigant and prosecute or defend the civil action without paying costs.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 12.015 is hereby amended to read as follows:

12.015 1. Any person who desires to prosecute or defend a  
civil action ~~[may:~~

~~—(a) File an affidavit with the court setting forth with particularity  
facts concerning the person's income, property and other resources  
which establish that the person is unable to prosecute or defend the  
action because the person is unable to pay the costs of so doing; or~~

~~—(b) Submit a statement or otherwise indicate to the court that the  
person is a client of a program for legal aid.]~~ *without paying the  
costs for prosecuting or defending the action may file, on a form  
provided by the court, an application to proceed as an indigent  
litigant.*

2. *The court shall grant an application to proceed as an  
indigent litigant if, based on its review of the application, the court  
determines that the person:*

*(a) Is a client of a program for legal aid;*

*(b) Is receiving benefits provided by a federal or state program  
of public assistance;*

*(c) Has a household income which is equal to or less than 150  
percent of the federally designated level signifying poverty as  
provided in the most recent federal poverty guidelines published in  
the Federal Register by the United States Department of Health  
and Human Services;*

*(d) Does not have sufficient liquid assets or assets which could  
be sold or borrowed against to pay the costs of prosecuting or  
defending the action without damaging his or her financial  
position;*

*(e) Has expenses for the necessities of life that exceed his or  
her income; or*

*(f) Has otherwise shown compelling reasons that he or she  
cannot pay the costs of prosecuting or defending the action.*

3. If the court ~~[is satisfied that a person who files an affidavit  
pursuant to subsection 1 is unable to pay the costs of prosecuting or  
defending the action or if the court finds that a person is a client of a  
program for legal aid,]~~ *grants the application of a person to  
proceed as an indigent litigant pursuant to subsection 2,* the court  
shall order:

(a) The clerk of the court:

(1) To allow the person to commence or defend the action  
without costs; and

(2) To file or issue any necessary writ, process, pleading or  
paper without charge.



(b) The sheriff or other appropriate public officer within this State to make personal service of any necessary writ, process, pleading or paper without charge.

~~[3.]~~ 4. If the person is required to have proceedings reported or recorded, or if the court determines that the reporting, recording or transcription of proceedings would be helpful to the adjudication or appellate review of the case, the court shall order that the reporting, recording or transcription be performed at the expense of the county in which the action is pending but at a reduced rate as set by the county.

~~[4.]~~ 5. If the person prevails in the action, the court shall enter its order requiring the losing party to pay into court within 5 days the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.

~~[5.—Where the affidavit establishes]~~

~~6. If, based on its review of an application of a person to proceed as an indigent litigant, the court determines~~ that the person is unable to defend an action, the running of the time within which to appear and answer or otherwise defend is tolled during the period between the filing of the ~~[affidavit]~~ *application* and the ruling of the court thereon.

~~[6.]~~ 7. An ~~[affidavit]~~ *application to proceed as an indigent litigant* filed pursuant to this section, and any application or request for an order filed with the ~~[affidavit.]~~ *application*, does not constitute a general appearance before the court by the ~~[affiant]~~ *applicant* or give the court personal jurisdiction over the ~~[affiant]~~ *applicant*.

8. The order of ~~[the]~~ a court ~~[to which]~~ *granting or denying an application [is made] to proceed as an indigent litigant* pursuant to this section is not appealable.

~~[8.]~~ 9. As used in this section, “client of a program for legal aid” means a person:

(a) Who is represented by an attorney who is employed by or volunteering for a program for legal aid organized under the auspices of the State Bar of Nevada, a county or local bar association, a county or municipal program for legal services or other program funded by this State or the United States to provide legal assistance to indigent persons; and

(b) Whose eligibility for such representation is based upon indigency.

**Sec. 2.** This act becomes effective on July 1, 2021.

