

Amendment No. 81

Assembly Amendment to Assembly Bill No. 107	(BDR 2-564)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

JDK/BAW



Date: 4/6/2021

A.B. No. 107—Revises the procedure for determining whether a person may prosecute or defend a civil action without paying costs.
(BDR 2-564)



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.

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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 : (1) file an application to proceed as an indigent litigant; ~~and~~ or (2) ~~establish~~ if the person is a client of a program for legal aid, submit to the court a statement of legal representation or otherwise indicate to the court that the person is a client of a program for legal aid. This bill also establishes certain criteria for the court to use in determining whether to grant ~~the~~ an 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~~

1 the person is unable to prosecute or defend the action because the person is unable
2 to pay the costs of so doing; or

3 ~~— (b) Submit a statement or otherwise indicate to the court that the person is a~~
4 ~~client of a program for legal aid.] without paying the costs for prosecuting or~~
5 ~~defending the action may [file:] :~~

6 (a) File, on a form provided by the court, an application to proceed as an
7 indigent litigant [f], which must include a declaration that complies with the
8 provisions of NRS 53.045; or

9 (b) If the person is a client of a program for legal aid, submit to the court a
10 statement of representation or otherwise indicate to the court that the person is a
11 client of a program for legal aid.

12 2. ~~The court shall [grant an application to proceed as an indigent litigant]~~
13 ~~allow a person to commence or defend the action without costs and file or issue~~
14 ~~any necessary writ, process, pleading or paper without charge if [f-based] :~~

15 (a) Based on its review of [the] an application [f] filed pursuant to paragraph
16 (a) of subsection 1, the court determines that the application should be granted
17 and the person may proceed as an indigent litigant because the person:

18 ~~[(a) Is a client of a program for legal aid;~~

19 ~~— (b) (1) Is receiving benefits provided by a federal or state program of public~~
20 ~~assistance;~~

21 ~~[(c) (2) Has a household net income which is equal to or less than 150~~
22 ~~percent of the federally designated level signifying poverty as provided in the most~~
23 ~~recent federal poverty guidelines published in the Federal Register by the United~~
24 ~~States Department of Health and Human Services;~~

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

28 ~~— (e) (3) Has expenses for the necessities of life that exceed his or her income;~~
29 ~~or~~

30 ~~[(f) (4) Has otherwise shown compelling reasons that he or she cannot pay~~
31 ~~the costs of prosecuting or defending the action.~~

32 (b) The person has submitted a statement of representation or otherwise
33 indicated to the court that the person is a client of a program for legal aid
34 pursuant to paragraph (b) of subsection 1.

35 ↪ The sheriff or another appropriate public officer within this State shall make
36 personal service of any necessary writ, process, pleading or paper without charge
37 for an applicant whose application has been granted or a person who has
38 submitted a statement of legal representation or otherwise indicated to the court
39 that the person is a client of a program for legal aid.

40 ~~[(3. If the court is satisfied that a person who files an affidavit pursuant to~~
41 ~~subsection 1 is unable to pay the costs of prosecuting or defending the action or if~~
42 ~~the court finds that a person is a client of a program for legal aid, grants the~~
43 ~~application of a person to proceed as an indigent litigant pursuant to subsection~~
44 ~~2, the court shall order:~~

45 ~~— (a) The clerk of the court:~~

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

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

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

52 3. [4.] If the person is required to have proceedings reported or recorded, or if
53 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]~~ If an applicant files an application to proceed as an indigent litigant pursuant to paragraph (a) of subsection 1 to defend an action, the running of the time within which to appear and answer or otherwise defend the action is tolled during the period between the filing of the ~~[affidavit]~~ application and the ~~[ruling]~~ decision of the court ~~[thereon]~~ to grant or deny the application.

~~6. [7. An affidavit]~~ The filing of an application to proceed as an indigent litigant ~~[filed]~~ pursuant to ~~[this section]~~ paragraph (a) of subsection 1 and any application or request ~~[for an order]~~ filed with the ~~[affidavit]~~ application ~~[does]~~ and the submission of a statement of legal representation or other indication to the court that the person is a client of a program for legal aid pursuant to paragraph (b) of subsection 1 do not constitute a general appearance before the court by the ~~[affiant]~~ applicant or person or give the court personal jurisdiction over the ~~[affiant]~~ applicant or person.

~~7. [applicant]~~

~~8. The [order] decision of [the] a court [to which] granting or denying an application [is made] to proceed as an indigent litigant filed pursuant to [this section] paragraph (a) of subsection 1 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]~~ 30 days after passage and approval.