
By Mr. Sisitsky, a petition (accompanied by bill, Senate, No. 873) of Alan D. Sisitsky for legislation to amend the indigent court costs law. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-nine.

AN ACT AMENDING THE INDIGENT COURT COSTS LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 27A of chapter 261 of the General Laws,
2 as inserted by section 3 of chapter 694 of the Acts of 1974, is
3 hereby amended in the fifth paragraph by striking all words
4 after the words "expert assistance" and inserting in their place
5 the words: — appeal bonds and appeal bond premium.

1 SECTION 2. Said chapter 261 of the General Laws is hereby
2 amended by striking section 27B, as amended by section 268
3 of chapter 478 of the Acts of 1978, and inserting in place
4 thereof the following section: —

5 *Section 27B.* Upon or after commencing or answering to
6 any civil, criminal or juvenile proceeding or appeal in any
7 court, including but not limited to civil actions, proceedings
8 for divorce or separate support, summary and supplementary
9 processes, and proceedings upon petitions to vacate, for review
10 or for a writ of error in a criminal case, any party may file
11 with the clerk or register, serving a copy upon all other par-
12 ties, an affidavit of indigency and request for waiver, substi-
13 tution or payment by the commonwealth of fees and costs
14 (hereinafter called the affidavit) upon a form prescribed by
15 the chief justice of the supreme judicial court and in accord-
16 ance with the standards set forth in sections twenty-seven C
17 to twenty-seven F, inclusive, and sworn to under oath by the
18 affiant.

19 An indigent party may subsequently file one or more sup-
20 plementary affidavits requesting the waiver, substitution or
21 payment by the commonwealth of fees and costs not previ-

22 ously granted at any time while the case is still pending, in
23 the original court or elsewhere.

1 SECTION 3. Said chapter 261 is hereby further amended by
2 striking section 27C, as amended by said section 269 of chap-
3 ter 478 of the Acts of 1978, and inserting in place thereof the
4 following section: —

5 *Section 27C.* (1) If the affidavit is filed with the complaint
6 or other paper initiating the proceeding, the court shall re-
7 ceive the complaint or other paper for filing and proceed as
8 if all regular filing fees had been paid. Such filing shall be
9 conditional until either (a) the affidavit is granted or (2), if
10 the affidavit is denied, the payment of necessary and regular
11 filing fees is made within five days of the denial of the affi-
12 davit, or such further time as the court may allow, or within
13 five days of the denial of any appeal relating to the affidavit,
14 whichever is later.

15 (2) If the affidavit is unopposed, appears regular and com-
16 plete on its face, indicates that the affiant is indigent by
17 reason of being a recipient of public assistance or is otherwise
18 clearly indigent, and requests the waiver, substitution or pay-
19 ment by the commonwealth of only normal fees and costs, the
20 clerk or register shall grant such request forthwith without
21 hearing and without the necessary appearance of counsel or
22 any party.

23 (3) If the affidavit does not appear to satisfy the conditions
24 of paragraph (2) above, the clerk or register shall forthwith
25 bring the affidavit to the attention of the justice or judge, as
26 the case may be. The justice or judge may grant such re-
27 quest forthwith or may have the clerk or register notify the
28 affiant that a hearing must be held on the affidavit before any
29 action can be taken on the affidavit. The affiant may schedule
30 a hearing on the affidavit after at least three days' notice to
31 all the parties. If it appears at the hearing that there is a
32 serious question as to the applicant's indigency, before mak-
33 ing a finding thereon the court shall consider the following
34 facts with respect to the applicant in the immediate past, as
35 of the time of hearing and with respect to the immediate
36 future: his age, education, training, physical and mental abil-

37 ity and number of dependents; gross and net income; regular
38 and extraordinary expenses, if any; assets and liabilities;
39 whether or not he is a recipient of public assistance and for
40 what purpose; and any other facts which are relevant to the
41 applicant's ability to pay court costs.

42 (4) If the court makes a finding of indigency, it shall not
43 deny any request with respect to normal fees and costs, and it
44 shall not deny any request with respect to extra fees and
45 costs if it finds the document, service or object is reasonably
46 necessary to assure the applicant as effective a prosecution,
47 defense or appeal as he would have if he were financially able
48 to pay. The court shall not deny any request without first
49 holding a hearing thereon; and if there is an appeal pursuant
50 to section twenty-seven D following a denial, the court shall,
51 within three days, set forth its written findings and reasons
52 justifying such denial, which document shall be part of the
53 record on appeal.

54 (5) The clerk of each court shall conspicuously post in that
55 part of his office open to the public a notice informing the
56 public in plain language of the availability of waiver, substi-
57 tution of payment by the commonwealth of fees and costs for
58 indigent persons.

1 SECTION 4. Said chapter 261 is hereby further amended by
2 striking section 27D, as amended by said section 269 of chap-
3 ter 478 of the Acts of 1978, and inserting in place thereof the
4 following section: —

5 *Section 27D.* In any case where the court denies a request
6 for waiver, substitution or payment by the commonwealth of
7 fees and costs, pursuant to section twenty-seven C or any other
8 provision of law, the applicant may take an appeal as here-
9 inafter provided. If the matter arises in the land or superior
10 or in a probate or housing court, the appeal shall be to the
11 single justice of the appeals court at the next sitting thereof;
12 and if the matter arises in any district, municipal or juvenile
13 court, the appeal shall be to the superior court then sitting in
14 the same county, if any, or if not, to the superior court sit-
15 ting in the nearest county or in Suffolk county. Upon being
16 notified of the denial the applicant shall also be advised of his

17 right of appeal, and he shall have seven days thereafter to
18 file a notice of appeal with the clerk or register. Upon re-
19 ceipt of a notice of appeal timely filed the clerk or register
20 shall forthwith notify the judge or justice, who shall within
21 three days set forth his written findings and reasons as pro-
22 vided in paragraph (4) of section twenty-seven C. The clerk
23 or register shall then forward the affidavit and request, the
24 court's findings and reasons for denial and any other docu-
25 ments on file relevant to the appeal, to the clerk of the court
26 hearing the appeal, who, upon receipt thereof, shall set the
27 matter down for speedy hearing and send notice to the par-
28 ties. The court denying the request may, with or without
29 motion, stay proceedings pending appeal or issue any other
30 order or process to preserve the rights of the parties pending
31 the appeal. The court hearing the appeal may enter or revoke
32 such a stay or other order, and its decision shall be final with
33 respect to such a request.