

# POVERTY AFFIDAVIT

## How to File a Case When You are Financially Unable

It is advisable to have an attorney when filing legal papers to be sure that your rights are protected and that all the procedures are correctly followed. **Courthouse personnel are prohibited by state law O.C.G.A. § 15-19-51 from giving legal advice.** Different situations may require special procedures and courthouse personnel cannot advise you on how to proceed or what forms may be necessary in specific situations.

If you are financially unable (not just reluctant) to pay the filing fee, you may file an *affidavit of indigence*, which is also referred to as a *Poverty Affidavit*. This is a request, asking the Court to let you file your case for free.

A judge does not automatically grant these requests. You will be asked questions to help the judge decide if you truly cannot afford to pay the filing fee. You may be required to show proof of your income and your bills. Please attach a copy of any documents that verify your income, such as pay stubs or unemployment checks.

You must present to the Court a completed and signed original of the action (complaint, name change, etc.) that you are asking the Court to allow you to file without paying a filing fee. PLEASE NOTE: Your petition/complaint will not be filed until the Court approves the *Affidavit of Indigence*. If the Court does not approve your affidavit, you will be required to pay all court costs before the complaint/petition will be filed.

**O.C.G.A. 9-15-2. Affidavit of indigence; effect; how contested; finality of court's judgment; inquiry on court's own motion; order to pay costs; effect on merits; procedure when filing party not represented by counsel**

(a) (1) When any party, plaintiff or defendant, in any action or proceeding held in any court in this state is unable to pay any deposit, fee, or other cost which is normally required in the court, if the party shall subscribe an affidavit to the effect that because of his indigence he is unable to pay the costs, the party shall be relieved from paying the costs and his rights shall be the same as if he had paid the costs.

(2) Any other party at interest or his agent or attorney may contest the truth of an affidavit of indigence by verifying affirmatively under oath that the same is untrue. The issue thereby formed shall be heard and determined by the court, under the rules of the court. The judgment of the court on all issues of fact concerning the ability of a party to pay costs or give bond shall be final.

(b) In the absence of a traverse affidavit contesting the truth of an affidavit of indigence, the court may

inquire into the truth of the affidavit of indigence. After a hearing, the court may order the costs to be paid if it finds that the deposit, fee, or other costs can be paid and, if the costs are not paid within the time permitted in such order, may deny the relief sought.

(c) The adjudication of the issue of indigence shall not affect a decision on the merits of the pending action.

(d) When a civil action is presented for filing under this Code section by a party who is not represented by an attorney, the clerk of court shall not file the matter but shall present the complaint or other initial pleading to a judge of the court. The judge shall review the pleading and, if the judge determines that the pleading shows on its face such a complete absence of any justiciable issue of law or fact that it cannot be reasonably believed that the court could grant any relief against any party named in the pleading, then the judge shall enter an order denying filing of the pleading. If the judge does not so find, then the judge shall enter an order allowing filing and shall return the pleading to the clerk for filing as in other cases. An order denying filing shall be appealable in the same manner as an order dismissing an action.