

LOCAL RULE 2. COSTS DEPOSITS

(A) **Appeal.** At the time of filing a notice of appeal in the trial court, the appellant or cross-appellant shall deposit with the clerk of courts the sum of \$125 as security for the payment of costs that may accrue in the court of appeals. The clerk of the trial court shall forward such deposit to the clerk of the court of appeals with the copy of the notice of appeal and other papers as required by Loc.R. 3(B).

(B) **Original Actions.** At the time of filing a complaint in an original action (quo warranto, mandamus, habeas corpus, prohibition, or procedendo), the relator shall deposit with the clerk of the court of appeals the sum of \$125 as security for the payment of costs that may accrue in the action. If a party seeks the attendance of a witness through a subpoena, the party shall first deposit with the clerk of the court of appeals \$20 for each witness.

(C) **Actions Brought by Indigents.** If the party bringing the appeal or original action, or the party seeking the attendance of a witness, claims to be unable to pay a deposit, the party shall do one of the following:

(1) file a motion to waive the payment of the deposit and an affidavit of indigency that contains financial information to support the party's claim that the party is unable to make the deposit. The party must use the affidavit of indigency approved by the Ohio Public Defender's Office; the affidavit must have been notarized within one year of the date of filing with this court. If the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate of the superintendent or other appropriate officer of the institution setting forth the amount of available funds, if any, that the inmate has on deposit with the institution. The court's grant of a waiver of the deposit does not waive the liability to pay the court costs as ordered by the court at the termination of the appeal or original action.

(2) where counsel has been appointed by a trial court to represent an indigent party, a copy of the entry of appointment may be filed in lieu of filing a motion to waive the cost deposit. Counsel shall include a cover page that complies with App.R. 19(B) with the entry of appointment attached. The filing of the order of appointment shall serve to waive the payment of the cost deposit without further order of this Court, but does not waive the liability to pay the court costs as ordered by the court at the termination of the appeal or original action.

(D) **Failure to Pay Deposit.** If the party bringing the appeal or original action, or the party seeking the attendance of a witness, files with the clerk a sworn affidavit of inability to secure costs by prepayment, the clerk shall receive and file the appeal, complaint, or subpoena the witnesses without security deposits. After notice to all of the parties, the court may dismiss the case at any time if the deposit is not paid or a waiver of the payment of the deposit pursuant to subsection (C) has not been obtained.

[Adopted eff. 7-1-98, amended eff. 1-1-06, amended eff. 3-16-11.]

COMMENTARY

Indigent appellants may file motions to waive the cost deposit in their appeals. Indigent appellants who are incarcerated must attach both an affidavit of indigence and a statement of their prisoner trust account. It can be difficult and time-consuming for appointed counsel to obtain these forms from their clients and the prisons. This process also leads to motions asking for additional time to comply with the Local Rule or orders stating that the motion to proceed in forma pauperis did not comply with this Court's Local Rules.

To avoid the time and cost associated with requesting these documents, filing the motions, entering orders, and serving the orders, this Court has proposed this Local Rule to streamline the process. The proposed Local Rule follows the Ohio Supreme Court's Rule of Practice that allows a party to file an entry of appointment in lieu of paying the filing fee. Under the proposed Local Rule, an appointed attorney may file the trial court's order that appointed the attorney for purposes of the appeal rather than filing a motion to proceed in forma pauperis, an affidavit of indigence, and, if the appellant is incarcerated, a statement of the prisoner's trust account.

With the adoption of the changes to this Local Rule, there will be three ways to satisfy the cost deposit requirement:

1. deposit with the clerk of courts the sum of \$125 (Local Rule 2(A)); or
2. file a motion to proceed in forma pauperis, along with an affidavit of indigence and, if the appellant is incarcerated, a statement of the prisoner's trust account (Local Rule 2(C)(1)); or
3. file a copy of the entry of appointment of counsel, with an appropriate cover sheet (Local Rule 2(C)(2)).