

Louisiana In Forma Pauperis Quick Reference Guide

In forma pauperis (IFP) is the ability of a litigant to proceed in Louisiana courts. It is intended to assist judges and without the pre-payment of court costs entrenched in both the U.S. and Louisiana constitutions. This quick reference guide outlines key procedural rules, statutory entitlements, and common issues related to in forma pauperis proceedings in Louisiana courts. It is intended to assist judges and clerks in ensuring compliance with governing law and safeguarding access to justice for litigants who cannot afford to prepay court costs.

Part 1. Who Can Litigate Without Cost and How

Who is entitled to Litigate IFP? Litigants who, due to “poverty and lack of means,” are “unable to pay the costs of court in advance, or as they accrue, or to furnish security therefor” may proceed IFP. La. Code Civ. P. art. 5181(B), 5183(A)(1). This means the litigant does not pre-pay costs or furnish a bond during the proceeding. The privilege extends to civil and criminal expungement court proceedings, including appellate and succession proceedings. La. Code Crim. Proc. art 983(L).

Who Is Entitled to a Rebuttable Presumption for IFP status? If an IFP applicant *either* (1) “receiv[es] public assistance benefits” (e.g., Medicaid, SNAP, FITAP, SSI) OR (2) their “income is less than or equal to one hundred twenty-five percent of the federal poverty line,” there is a “rebuttable presumption that the applicant is entitled to” the IFP privilege. La. Code Civ. Proc. art. 5183(B)(2).

- **Important!** An applicant that has income above 125% of the federal poverty line or does not receive public benefits MAY PROCEED IFP if he/she can show they are unable to pay court costs in advance.
- **If the court finds the presumption is rebutted, the court must explain why in writing.** La. Code Civ. P. art. 5183(B)(1)(b). The requirement that the Court provide written reasons for denials is “intended to provide the applicant with additional information necessary to, for example, correct a deficiency in the application.” Comments, 2021, La. Code Civ. P. art. 5183.
- **Where can the Court find the income levels for 125% of poverty?** These income levels change annually and are typically issued in late January. You can find the current poverty levels at:
 - *Federal Register* in late January.
 - [Department of Health and Human Services \(HHS\) - ASPE Poverty Guidelines website \(https://tinyurl.com/42resbhu\)](https://tinyurl.com/42resbhu)
 - [U.S. Citizenship and Immigration Services\(USCIS\) - 2025 HHS Poverty Guidelines for Affidavit of Support website \(https://www.uscis.gov/i-864p\)](https://www.uscis.gov/i-864p)

Litigants Pursuing Domestic Protection Orders are Entitled to Litigate Without Cost Regardless of IFP Status. Petitioners filing for protection orders in matters involving intimate partner violence cannot be required to pay any fees or costs associated with the litigation, according to state and federal law. La. C.C.P. art. 3603.1(A); 42 U.S.C. § 3796gg-5(a)(1).

- **Exception!** Courts may require petitioners in such cases to pay costs if the court determines the petition was frivolous. However, a petitioner’s failure to appear for a hearing despite notice is not a basis for frivolity. See *Koerner v. Monju*, 16-487 (La. App. 5 Cir. 2/8/17); 210 So.3d 935, 936; *Lassair on Behalf of T.P.J. v. Paul*, 2022-0320, p. 10 (La. App. 4 Cir. 12/14/20); 353 So.3d 1048, 1054-55.

Part 2. How Do Litigants Apply for IFP Status?

What Must an IFP Applicant Submit to the Court?

- District Courts are required to use the standardized Supreme Court IFP Affidavit ([Louisiana District Court Rules Appendix 8.0](#)), in addition to “supporting documentation” related to the items on the form. See La. Dist. Ct. Unif. Rule 8.0.
- Other courts may either use the standardized form or otherwise require: (1) an affidavit stating that he or she is unable to pay court costs due to poverty and lack of means, with any supporting documentation; and (2) an affidavit from a third party, other than the applicant’s attorney, who knows the applicant, his or her financial condition, and can attest to their inability to pay. La. Code Civ. P. 5183(A).

Must the Applicant Fill Out All Items on the Form?

- In the District Courts, applicants filing the standardized IFP affidavit are NOT REQUIRED to answer **Question 9** (asset, expense, and loan disclosure) if he or she has a combined income that is less than or equal to 125% of the federal poverty level and is a client of a program funded by the Legal Services Corporation (i.e. Acadiana Legal Service Corporation and Southeast Louisiana Legal Services) or a Pro Bono Project who receives referrals. *Myers v. Berggreen*, 2003-2022 (La. 11/7/03), 857 So. 2d 507.
- **Important!** Providing a Social Security number is OPTIONAL and must not be a condition for filing IFP applications. La. Dist. Ct. Unif. Rule 8.2.
- **Exception!** Courts, with the exception of District Courts, may use forms that do not allow for the omission of this information.

This information compiled in partnership with:



Part 3. Types of Determinations

What Actions Can the Court Take on an IFP Application? The Judge ruling on an IFP application can:

- (1) grant the application and allow the applicant to proceed in forma pauperis,
- (2) deny the application and PROVIDE WRITTEN REASONS for such denial, or
- (3) set the matter for a contradictory hearing. La. Code Civ. P. art. 5183(B)(1)(c).

Important! Judges are required to provide written reasons for denying an applicant's IFP request. Parties must be given notice of the order on an IFP application. La. Code Civ. P. art. 1914. Contradictory hearings also require proper notice to counsel and unrepresented parties.

Part 4. What Happens After IFP is Granted

What Services are Available to an IFP Litigant? An IFP litigant is entitled to all services required by law of sheriffs, clerks of court, court reporters, notaries, or other public officers in connection with the judicial proceeding, e.g., filing pleadings and exhibits, issuing certificates or notarial acts and public records, issuing subpoenas, serving process, taking and transcribing testimony, issuing judgments, and preparing appeal records.

May a Litigant's Request to Proceed IFP be Challenged? Yes. An adverse party or the clerk of the court may file no more than one rule to traverse the affidavit. The court may also reconsider IFP status on its own motion after a contradictory hearing. The IFP applicant must be given a full evidentiary hearing if the rescission of IFP status is based on disputed facts.

Who is Responsible for Payment of Costs? If the IFP litigant prevails, the party cast in judgment shall pay all costs incurred by the IFP party. La. Code Civ. P. art. 5186. If the IFP litigant loses, except as otherwise provided by Articles 1920 and 2164, the IFP litigant shall be responsible for costs incurred in accordance with Article 5186, together with those recoverable by the adverse party.

- **Note! Succession Proceedings.** A party may proceed IFP in a succession proceeding. The court shall order the payment from succession assets of all costs due to the court. But, this is only after the conclusion of the succession proceedings. S.B. 67, Act No. 34, amends La. Code Civ. P. art. 5186(B) (effective Aug. 1, 2025). The new legislation does not further specify to whom the costs are assessed and leaves this issue to the court's discretion. If the proceeding is uncontested, presumably the costs should be allocated to the share of the succession awarded to the party proceeding IFP. If, on the other hand, the succession is contested and the IFP party is successful, the party against whom the judgment is rendered shall be condemned to pay all costs. La. Code Civ. P. art. 5186(C).

Part 5. Important Reminders for IFP Litigation

- Courts cannot require payment plans for IFP litigants unless they are incarcerated. La. Code Civ. Proc. art. 5181; see also La. R.S. 15:1186(B)(2).
- Courts may not reject new pleadings or suits because of unpaid costs from a different case. See *Hawkins v. City of Jennings*, 97-1291 (La. App. 3 Cir. 3/6/98); 709 So. 2d 292, 293.
- IFP litigants may not be required to post bonds for court costs or attorney's fees. La. R.S. § 13:4522.
- Courts may not require IFP litigants to pay curator or attorney ad hoc fees appointed to represent absentee or out-of-state defendants under La. Code Civ. Proc. art. 5096. *Jones v. Jones*, 297 So.2d 198 (La. 1974).
- IFP litigants retain their rights to jury trials without posting a jury bond.
- Courts may not assess costs to prevailing IFP litigants, including in default or uncontested cases. La. Code Civ. Proc. art. 5185(A)(3); see also *McCoy v. Louisiana*, 345 So. 2d 1175, 1176 (La. 1977).
- Clerks may not withhold judgments, orders, or certified copies from IFP litigants due to unpaid costs. La. Code Civ. Proc. art. 5184(A)(4); see also *Carline v. Carline*, 93-1505 (La. App. 1 Cir. 10/7/94), 644 So. 2d 835, 836.
- Financial support from private third parties (such as family, friends, or charitable organizations) does not disqualify a litigant from IFP eligibility. *Fils v. Iberia, St. M. & E.R. Co.*, 145 La. 544, 82 So. 697 (1919).
- Local court rules that impose burdens beyond those authorized by the Code of Civil Procedure, such as mandatory in-person affidavit review, are invalid. La. Code Civ. Proc. art. 5183; see also *Futch v. Coumes*, 347 So. 2d 1121, 1122 (La. 1977).
- Courts should not require income tax returns with every IFP application absent a reason specific to the case.

This information compiled in partnership with:



ACCESS TO JUSTICE: COMMON PROCEDURAL ISSUES CONFRONTED BY THE IN FORMA PAUPERIS PRACTITIONER¹

Louisiana Appleseed²

“[A]n individual’s privilege to litigate his claim in our courts is not regarded as a luxury. Rather, it is regarded as a privilege granted him in the interest of individual justice to him, and in the interest of a judicial system designed to provide justice for all.”³

I. Introduction

The Access to Justice (“ATJ”) Committee of the Louisiana State Bar Association (“LSBA”) has identified a number of issues facing impoverished litigants seeking access to Louisiana courts. The ability of a litigant to proceed without the pre-payment of such court costs, also known as proceeding *in forma pauperis* (“IFP”), is a privilege entrenched in the United States Constitution and the Louisiana Constitution of 1974. This privilege is also codified in 28 U.S.C. § 1915 and Louisiana Code of Civil Procedure articles 5181 through 5188.

Yet, certain customs in practice create significant impediments for IFP litigants. When surveyed, attorneys representing IFP litigants named numerous reasons why their clients are improperly denied IFP status. Courts most commonly deny IFPs based on a misinterpretation of the laws automatically affording IFP status. For example, a litigant within 125% of the federal poverty level is denied though presumptively entitled to proceed IFP, or a litigant above the federal poverty level is denied despite still qualifying for IFP status. Other courts have also wrongfully denied IFPs by requiring advance costs to be paid, treating public assistance programs as income, or inconsistently applying the law.

Part II of this paper addresses the federal authority, state authority, and procedural rules granting litigants the opportunity to proceed IFP. Part III identifies some of the practices that impede IFP litigants’ access to the judicial system, some of which are clear violations of Louisiana’s Code of Civil Procedure, including but not limited to the IFP Articles.

¹ Last updated in July 2025.

² Volunteer attorneys—Sydney Fay, Yue-Zhen Li, Kristen Love, and Nicholas Spagnuolo—from Hogan Lovells US LLP worked with Louisiana Appleseed and the Access to Justice Committee to update this guide. The volunteer team was also supervised by Ben Holt and Arielle Anderson of Hogan Lovells US LLP. The Access to Justice Committee (ATJ) includes Hon. Lisa M. Woodruff-White and representatives from Acadiana Legal Service Corporation, Justice and Accountability Center of Louisiana, Louisiana Appleseed, Louisiana State Bar Association, and Southeast Louisiana Legal Services.

³ Benjamin v. Nat’l Super Markets, Inc., 351 So. 2d 138, 141 (La. 1977).

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FEDERAL AND STATE AUTHORITY TO LITIGATE IN FORMA PAUPERIS.....	3
A. Federal Authority and Procedure	3
B. State Authority and Procedure	3
III. IFP ISSUES IN PRACTICE	12
A. IFP-Related Issues That Are Clearly Addressed by Louisiana Law.....	12
B. IFP Issues That Arise in Practice But That Have Not Been Directly Addressed by Statute and/or Case Law	27
IV. CONCLUSION	29

II. Federal and State Authority To Litigate In Forma Pauperis

A. Federal Authority and Procedure

The traditions of IFP proceedings have their roots in the federal system. The original federal IFP statute enabled a citizen to proceed in federal court “without being required to prepay fees or costs or for the printing of the record in the appellate court . . . upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action or of such writ of error or appeal, or to give security for the same.”⁴ The United States Supreme Court explained that the original IFP statute was “intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, ‘in any court of the United States’ solely because his poverty makes it impossible for him to pay or secure the costs.”⁵

The current federal IFP statute states: “any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such an affidavit shall state the nature of the action, defense, or appeal and the affiant’s belief that the person is entitled to redress.”⁶ Louisiana, like all other states, has authorized the commencement, prosecution, or defense of judicial proceedings without pre-payment of court fees and costs.

B. State Authority and Procedure

1. Louisiana Constitution

Section 22 of the Louisiana Constitution of 1974 guarantees access to Louisiana courts for all of its citizens. It provides: “All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.”⁷ This may seem like a fundamental concept, however, our judicial system is not built to finance litigation for all of its citizens. There are costs associated with litigating in Louisiana courts. From filing fees to court costs, litigation requires a certain amount of capital. Some citizens simply do not possess the means to litigate.

Recognizing this fundamental unfairness, the Louisiana legislature enacted IFP laws in an effort to guarantee all Louisiana citizens equal access to justice. These laws provide the impoverished with special exceptions relative to costs so that they too may litigate in Louisiana courts. There are, however, limitations on who may obtain relief under the IFP laws.

⁴ Adkins v. E.I. du Pont de Nemours & Co, Inc., 335 U.S. 331, 333 (1948).

⁵ Id. at 342.

⁶ 28 U.S.C. § 1915(a)(1).

⁷ La. Const. art. I, § 22.

2. Who is Entitled to Litigate IFP?

The Louisiana Code of Civil Procedure permits a litigant to proceed with a claim without pre-paying the costs related to such claim or furnishing a bond for such costs if the litigant is “unable to pay the costs of court because of his poverty and lack of means,”⁸ specifically, if a litigant “is unable to pay the costs of court in advance, or as they accrue, or to furnish security therefor.”⁹ The privilege codified in Article 5181 of the Code of Civil Procedure is “restricted to litigants who are clearly entitled to it, with due regard to the nature of the proceeding, the court costs which otherwise would have to be paid, and the ability of the litigant to pay them or to furnish security therefor, so that the fomentation of litigation by an indiscriminate resort thereto may be discouraged, without depriving a litigant of its benefits if he is entitled thereto.”¹⁰

In the event an IFP litigant dies after being granted IFP status, but prior to resolution of the litigation at issue, the IFP litigant’s succession representative may continue to proceed IFP upon establishing that the succession of the deceased is indigent.¹¹ Additionally, any offender/prisoner, as defined in the Corrections Administrative Remedy Procedure Act (“CARP”), may litigate IFP.¹² If IFP motions are brought pursuant to CARP or the Prison Litigation Reform Act (“PLRA”), then La. R.S. 15:1186 governs.¹³ Civil actions not governed by the CARP or the PRLA are governed by La. Code Civ. Proc. Arts. 5181–85.¹⁴

A trial judge has the authority, as well as the duty, to subject IFP orders to consistent scrutiny to thwart abuse.¹⁵ The trial judge may reconsider a litigant’s IFP status if the judge has a reason to believe such litigant’s circumstances have changed or that the order was improperly granted.¹⁶ Such reconsideration, however, must occur after an evidentiary hearing if rescission of the IFP order is dependent upon contested issues of fact.¹⁷

3. Who is Entitled to Litigate Without Cost Regardless of IFP Status?

In matters involving domestic abuse, the Louisiana Code of Civil Procedure expressly provides that petitioners “seeking protection from domestic abuse, dating violence, stalking, or

⁸ La. Code Civ. Proc. art. 5181(A). There are special rules for permitting those persons incarcerated or imprisoned for the commission of a felony to proceed without paying costs in advance as they accrue or furnishing security for such costs. Under such circumstances, the court shall require such persons to advance costs in accordance with the schedule set forth in La. Code Of Civ. Proc. art. 5181, a copy of which is attached hereto as Appendix 1.

⁹ La. Code Civ. Proc. art. 5183(A)(1).

¹⁰ La. Code Civ. Proc. art. 5182.

¹¹ Bates v. Dep’t of Culture, Recreation & Tourism, Off. of State Museum, 94-2265 (La. App. 1 Cir. 2/23/96), 694 So. 2d 294, 295.

¹² La. Dist. Ct. Unif. Rule 60.6.

¹³ Id.

¹⁴ Id.

¹⁵ City Stores v. Petersen, 268 So. 2d 662, 663 (La. 1972).

¹⁶ Id.

¹⁷ Id.

sexual assault shall not be required to prepay or be cast with court costs.”¹⁸ This protection is reinforced by La. R.S. 46:2134(F)–(G), which mandates that clerks must process applications for protective orders regardless of the applicant’s ability to pay and prohibits denial of relief on that basis. This is additionally reinforced by the federal Violence Against Women Act, which provides federal funding to states *only if* the state certifies that no costs will be charged against a survivor for filing a protective order.¹⁹

A court, therefore, cannot require a litigant seeking a protective order to pay any fees associated with the litigation. In Jimenez v. Jimenez, the court clerk attempted to cast the costs of litigation on the survivor after she moved to voluntarily dismiss her case three years after it was filed.²⁰ The case was not without merit because the court had issued fourteen temporary restraining orders over the three years.²¹ Ultimately, the appeals court held that the clerk erred by requiring the petitioner to pay the costs of litigation after she voluntarily dismissed the case.²² In more recent cases, courts find an exception to the non-payment of costs by petitioners in domestic violence proceedings “where the district court makes a determination that the petition was frivolous.”²³ However, a petitioner’s failure to appear for a hearing despite notice is not a basis demonstrating the petition was frivolous.²⁴

The National Domestic Violence Hotline finds that it takes a survivor, on average, seven times to leave an abusive relationship before staying away for good.²⁵ This means a petitioner may file for a protective order and fail to appear or voluntarily dismiss the case several times before seeing the case through. If the court dismisses the case after the petitioner fails to appear or moves to dismiss, some clerks incorrectly cast the costs of the litigation to the petitioner. Jimenez confirms this is unlawful, but the growing costs can nevertheless be a real barrier to survivors filing future petitions.

Courts can instead minimize untaxed costs by passing such cases without date, rather than dismissing the case, if there is no opposition and the allegations indicate a serious threat of future abuse. Although the Temporary Restraining Order will expire, the Petition for Protection from Abuse can still be litigated in the future. This choice protects survivors, reduces court cost and, filing a motion to reset, simplifies continuing the suit if the petitioner is in need of protection in the future.

¹⁸ See La. Code Civ. Proc. art. 3603.1(C)(1).

¹⁹ 34 U.S.C. § 10450(a)(1).

²⁰ Jimenez v. Jimenez, 05-645 (La. App. 5 Cir. 1/31/06), 922 So. 2d 672, 673.

²¹ Id.

²² Id. at 673-74.

²³ Koerner v. Monju, 16-487 (La. App. 5 Cir. 2/8/17); 210 So.3d 935, 936.

²⁴ Lassair on Behalf of T.P.J. v. Paul, 2022-0320, p. 10 (La. App. 4 Cir. 12/14/20); 353 So.3d 1048, 1054-55.

²⁵ Sarah M. Buel, *50 Obstacles to Leaving*, Nat’l Domestic Violence Hotline, <https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving/> (last visited June 23, 2025).

4. What Must an IFP Applicant Submit to the Court?

Any litigant wishing to proceed IFP will be required to apply for permission from the court in the initial pleading or in an *ex parte* motion if requested at a later date. The litigant shall attach to the pleading or motion: (1) an affidavit stating that he or she is unable to pay court costs in advance or as they may become due, or to furnish security therefor, because of his or her poverty and lack of means together with any supporting documentation; and (2) an affidavit of a third person, other than the applicant's attorney, that knows the applicant, his or her financial condition and believes that the applicant is unable to pay the costs in advance or as they accrue, or to furnish security therefor.²⁶

Rule 8.0 of the Uniform Rules for Louisiana District Courts ("Uniform Rules") requires that all parties seeking to proceed IFP in District Courts, other than prison inmates, complete the IFP Affidavit Form.²⁷ Other courts may use the IFP Affidavit Form, any other designated form, or otherwise require the affidavits specified under article 5183(A) of the Code of Civil Procedure. A trial court may require an IFP applicant to file the necessary affidavits in connection with his or her request to proceed IFP within a certain time frame.²⁸ Failure to file the affidavits within such a time frame may result in a dismissal of the case unless the applicant proceeds to prepay costs.²⁹

Upon submission of the application and supporting affidavits to the court, the court must examine the facts.³⁰ If the court is satisfied that the applicant has satisfied the requirements for proceeding IFP, it shall render an order permitting the applicant to litigate, or continue to litigate, the proceeding without pre-paying court costs or furnishing security.³¹ The submission of supporting documentation establishing: (1) that the applicant is receiving public assistance benefits; or (2) that the applicant's income is less than or equal to one hundred twenty-five percent (125%) of the federal poverty level, shall create a rebuttable presumption that the applicant is entitled to the privilege to proceed without pre-payment of court costs.³² Thus, absent evidence to rebut the presumption, a court may not deny a litigant's request to proceed IFP if such litigant is receiving public assistance or if the litigant's income is less than or equal to 125% of the federal poverty level. A court may, however, reconsider its order granting IFP status on its own motion at any time upon contradictory hearing.³³

²⁶ La. Code Civ. Proc. art. 5183(A).

²⁷ A copy of the IFP Affidavit Form is attached hereto as Appendix 2. Under Comment b to Rule 8.0, federal laws "provide that social security numbers are confidential and that government benefits may not be denied because of a person's refusal to provide that information, unless its provision is required by federal statute. Accordingly, an applicant is not required to list his or her Social Security number in the IFP Affidavit Form."

²⁸ Harrison v. Minardi, 2007-514 (La. App. 3 Cir. 10/31/07), 968 So. 2d 1221, 1224; *see also* Pearson v. Fontaine, 583 So. 2d 493 (La. 1991).

²⁹ Harrison, 968 So.2d at 1225.

³⁰ La. Code Civ. Proc. art. 5183(B).

³¹ Id.

³² Id.

³³ Id.

Before the current Article 5183 was enacted, the Louisiana Supreme Court explained that the key consideration in determining whether to grant IFP status is the applicant's ability to pay court costs out of "net income," taking into account reasonable living expenses and debts.³⁴ In Benjamin v. Nat'l Super Markets, Inc., the trial court granted the plaintiffs' right to appeal IFP and denied the defendant's motion to traverse the plaintiff's indigency, finding that the evidence showed that the plaintiffs were entitled to proceed IFP.³⁵ The court of appeal reversed on the basis that the husband's gross annual income for the previous year was \$20,898.23.³⁶ (This was 209% of the poverty level for the family size.³⁷) The appellate court did not, however, consider that the family's monthly debts exceeded their income due to the wife's disability and inability to work.³⁸ While the family owned a home, furniture, and a car, and the husband earned approximately \$1,200 per month, the monthly expenses of the family, which consisted of the husband, wife and five children, and the amounts owed for past debts, totaled \$1,700 per month.³⁹

The Louisiana Supreme Court reversed the court of appeal and reinstated the trial court ruling, explaining that "[t]he purpose of these (*in forma pauperis*) articles is to enable indigent persons to assert their causes in the courts of this state. This statutory privilege is to be interpreted liberally in favor of giving indigent persons their day in court."⁴⁰ The decision notes that other Louisiana state courts "have taken a realistic view as to the litigant's actual ability to advance or secure court costs out of net income available for that purpose, after payment of reasonable living expenses and debts, and in view of unencumbered property other than a modest family residence."⁴¹ The Louisiana Supreme Court recognized that under certain circumstances, IFP litigants remain liable for the costs of the proceedings.⁴² Additionally, if the IFP litigant is later able to pay such costs, then such costs may be collected, assuming the costs were not already recovered from the opposing party if the IFP litigant prevailed in his or her litigation.⁴³

5. What IFP Applicants Are Entitled to a Rebuttable Presumption?

If an IFP applicant "receiv[es] public assistance benefits" or whose "income is less than or equal to one hundred twenty-five percent of the federal poverty line," then there is a "rebuttable presumption that the applicant is entitled to" the IFP privilege.⁴⁴ The "intention of the Legislature or jurisprudence" was to utilize a rebuttable presumption to create a "liberal application of [*in*

³⁴ Benjamin v. Nat'l Super Markets, Inc., 351 So. 2d 138, 139 (La. 1977).

³⁵ Id.

³⁶ Id.

³⁷ According to U.S. Census records, in 1977, the poverty threshold for a nonfarm, male head household with five related children under 18 years of age was \$10,005. See Poverty Thresholds, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> (last visited June 23, 2025).

³⁸ Benjamin, 351 So. 2d at 139.

³⁹ Id. at 139-40.

⁴⁰ Id. at 140-41 (citation omitted).

⁴¹ Id. at 141.

⁴² Id.

⁴³ Id. at 141-42.

⁴⁴ La. Code Civ. Proc. art. 5183(B)(2).

forma pauperis] status.”⁴⁵ A trial court may abuse its discretion in denying a request for IFP status when denying a request for IFP without evidence presented at the hearing to rebut the indigent party’s assertions, thus failing to consider the rebuttable presumption.⁴⁶

6. How do Courts access the annual federal poverty guidelines?

The federal poverty guidelines (also referred to as the “poverty guidelines”) are a measure of income issued every year in the Federal Register by the Department of Health and Human Services (HHS) under the authority of 42 U.S.C. § 9902(2).⁴⁷ Programs—such as Supplemental Nutrition Assistance Program (SNAP), the National School Lunch Program, the Low-Income Home Energy Assistance Program, and the Children’s Health Insurance Program—use the guidelines to determine eligibility.⁴⁸ For each designated year, Courts may find the poverty guidelines for each year in the Federal Register in late January.⁴⁹ And the guidelines are effective as soon as they are published in the Federal Register.⁵⁰

Courts may access the poverty guidelines in the Federal Register, or through the HHS website, which has provided different multiples of the poverty guidelines for each year, including one hundred twenty-five percent of the federal poverty line⁵¹ (needed to determine whether an applicant qualifies for a rebuttable presumption under La. Code Civ. Proc. art. 5183(B)(2))⁵².

7. What Does an IFP Applicant Not Have to Submit to the Court?

An IFP applicant is **not** required to provide a social security number or information regarding their assets, if certain conditions are met, on their IFP Affidavit. Uniform Rule 8.2 provides that under federal law, “Social Security numbers are confidential and that governmental benefits may not be denied because of a person’s refusal to provide that information.”⁵³ Further, Louisiana’s Code of Civil Procedure does not require the inclusion of a social security number.⁵⁴ “Accordingly, providing [an] applicant’s Social Security number is optional in the [IFP]

⁴⁵ State v. Young, No. 22-KH-454, 2022 WL 7935147, at *3 (La. App. 5 Cir. Oct. 14, 2022). Case included in Appendix 3.

⁴⁶ See id.; State v. Calderon, No. 23-KH-165, 2023 WL 3608400, at *3 (La. App. 5 Cir. May 24, 2023) (granting a writ application because “while the district court expressed doubt on [IFP applicant]’s valuations of her assets and monthly expenses, there was no evidence presented at the hearing to rebut [the applicant]’s assertion that she is currently indigent and unable to pay court costs.”). Case included in Appendix 3.

⁴⁷ Poverty Guidelines, Office of the Assistant Secretary for Planning and Evaluation, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited June 23, 2025).

⁴⁸ Id.

⁴⁹ See id.

⁵⁰ Frequently Asked Questions Related to the Poverty Guidelines and Poverty, Office of the Assistant Secretary for Planning and Evaluation, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/frequently-asked-questions-related-poverty-guidelines-poverty> (last visited June 23, 2025).

⁵¹ See Poverty Guidelines, *supra* note 46.

⁵² See Section I.B.5, *supra*.

⁵³ La. Dist. Ct. Unif. Rule 8.2, cmt. (b).

⁵⁴ See La. Code Civ. Proc. art. 5183.

affidavit.”⁵⁵ Only the District Courts, however, are required to follow the Uniform Rules and use the IFP affidavit, so the requirements may differ for courts that do not use the IFP affidavit.

IFP litigants also do not need to provide information about their assets if they meet certain conditions. Question 9 of the IFP affidavit asks applicants about their finances, including whether they have interests in tangible assets, like homes and automobiles, and the amount of money they have in stocks and bank accounts.⁵⁶ But the IFP Affidavit provides:

If you are a client of a legal services program funded by the Legal Service Corporation or a Pro Bono Project that receives referrals from a legal services program and have a combined income from questions 7 and 8 that is less than or equal to 125% of the federal poverty level, **skip all parts of question 9**, and continue with question 10 on the next page.⁵⁷

Because of the rebuttable presumption and directions provided in the IFP Affidavit, an applicant should not be denied IFP status based on not completing any information for Question 9 in the IFP Affidavit. But, as stated above, courts that use a form other than the IFP Affidavit may require applicants provide additional information.

8. Who Makes the Initial Decision as to the Ability of a Litigant to Proceed IFP?

The ability of a litigant to proceed IFP is determined by the trial court.⁵⁸ Absent clear abuse, an appellate court may not disturb a trial court’s decision to grant or deny IFP status.⁵⁹ A clerk of court is also authorized to sign an order approving IFP status, but may not deny a request to proceed IFP.⁶⁰

The court can do one of three things after a person has filed a completed application to proceed in forma pauperis with the requisite supporting affidavits:

- (1) grant the application and allow the applicant to proceed in forma pauperis,⁶¹
- (2) deny the application and **provide written reasons for such denial**,⁶² or
- (3) set the matter for a contradictory hearing.⁶³

⁵⁵ La. Dist. Ct. Unif. Rule 8.2, cmt. (b).

⁵⁶ In Forma Pauperis Affidavit, at 2.

⁵⁷ In Forma Pauperis Affidavit, at 2 (emphasis added).

⁵⁸ Benjamin, 351 So. 2d at 142.

⁵⁹ Id.

⁶⁰ La. Code Civ. Proc. art. 283(A)(4) (“A. The clerk of a district court may sign any of the following orders or judgments: . . . (4) An order to permit a party to institute and prosecute, or to defend, a suit without the payment of costs, under the provisions of Articles 5181 through 5188.”).

⁶¹ Id. at art. 5183(B)(1)(a).

⁶² Id. at art. 5183(B)(1)(b) (emphasis added).

⁶³ Id. at art. 5183(B)(1)(c).

Judges are required to provide written reasons for denying an applicant's IFP request. The Louisiana legislature intimated that the requirement under article 5183 is "intended to provide the applicant with additional information necessary to, for example, correct a deficiency in the application. The form and contents of these written reasons are left to the discretion of the court."⁶⁴

If a trial court denies an IFP request, a litigant may apply for supervisory writs to obtain relief from an appellate court.⁶⁵ The Louisiana Supreme Court has "granted remedial and supervisory writs directing the court of appeal to accept such writ applications without payment of a filing fee so that the applicant's right to review . . . his status as a pauper is not foreclosed by that very status."⁶⁶

9. May a Litigant's Request to Proceed IFP Be Challenged?

Simply applying for IFP status does not guarantee that an applicant will be permitted to proceed IFP. An adverse party, or the clerk of court, may traverse the facts alleged in an IFP affidavit and challenge the IFP litigant's request to exercise the privilege. This is done through a rule to show cause why the order of the court permitting the litigant to proceed IFP should not be rescinded.⁶⁷ Only one rule to traverse the affidavit is permitted, regardless of whether the rule is filed by an adverse party or the clerk of the court.⁶⁸ But, as discussed previously, the trial judge may reconsider the grant of IFP status if the applicant's circumstances change.⁶⁹ The order must be rescinded if the court finds that the litigant is not entitled to the privilege to proceed IFP.⁷⁰

10. What Services are Available to an IFP Litigant?

Article 5185 states that an IFP litigant is entitled to the following:

- The services required by law of a sheriff, clerk of court, court reporter, notary, or other public officer in connection with the judicial proceeding. This includes, without limitation, the filing of pleadings and exhibits, the issuance of certificates, the certification of copies of notarial acts and public records, the issuance and service of subpoenas and process, the taking and transcribing of testimony, and the preparation of a record of appeal.⁷¹

⁶⁴ H.B. 108, Act No. 416, 2021 Reg. Sess., at 2021 cmt. (La. 2021).

⁶⁵ Roger A. Setter, La. Prac. Civ. App. § 3:82 Special Provisions for In Forma Pauperis Appeals – Procedure For Invoking Right to Proceed In Forma Pauperis (2011 ed.).

⁶⁶ Charles M. Delbaum, In Forma Pauperis In Louisiana: The Nuts and Bolts, 45 LA. B.J. 528, 529-30 (April 1998).

⁶⁷ La. Code Civ. Proc. art. 5184(A); La. Dist. Ct. Unif. Rule 8.1.

⁶⁸ La. Code Civ. Proc. art. 5184(A).

⁶⁹ Id. at art. 5183(B)(3).

⁷⁰ Id. at art. 5184(B).

⁷¹ Id. at art. 5185(A)(1).

- The right to compel attendance of not more than six witnesses for testifying either in court or by deposition, without paying fees, mileage, or other expenses allowed by law.⁷²
- If, after making its own inquiry as to the facts, and if satisfied that the litigant is entitled to proceed IFP, the court shall render an order permitting the party to subpoena additional witnesses at the expense of the parish. If it is denied, the court must state its reason(s) for the denial in writing.⁷³
- The right to a jury trial and the services of the jury.⁷⁴
- The right to have any judgment or order filed and to receive one certified copy of the judgment or order.⁷⁵
- The right to a devolutive appeal, and to apply for supervisory writs.⁷⁶

“It is not until there is an order of the court establishing pauper status that the party is entitled to all ‘services’ as noted in La. C.C.P. art. 5185.”⁷⁷

An IFP litigant may file a pleading by facsimile transmission.⁷⁸ Within seven days of the clerk’s receipt of the facsimile transmission, the IFP litigant must send the original pleading, facsimile transmission fee and IFP application, which satisfies the filing fee to the clerk of court as required by La. R.S. 13:850.⁷⁹

There are some limitations on the services available to IFP litigants. An IFP litigant is “not entitled to a suspensive appeal, or to an order or judgment required by law to be conditioned on his furnishing security other than for costs, unless [he] furnishes the necessary security therefor.”⁸⁰ Public officers are not required to “make any cash outlay” to perform the duties in Article 5185 “except to pay witnesses summoned at the expense of the parish the witness fee and mileage to which they are entitled.”⁸¹ The public officers to whom such costs would be payable shall keep an account of the costs incurred by an IFP litigant.⁸²

⁷² Id. at art. 5185(A)(2)(a).

⁷³ Id. at art. 5185(A)(2)(b).

⁷⁴ Id. at art. 5185(A)(3).

⁷⁵ Id. at art. 5185(A)(4); *see also* Carline v. Carline, 93-1505 (La. App. 1 Cir. 10/7/94), 644 So. 2d 835, 836 (holding that art. 5185 requires the clerk of court to provide a certified copy of the judgment in public record prior to paying court costs).

⁷⁶ La. Code Civ. Proc. art. 5185(A)(5).

⁷⁷ Jenkins v. Larpenter, 2004-0318 (La. App. 1 Cir. 3/24/05), 906 So. 2d 656, 658–59, writ denied, 2005-1078 (La. 6/17/05), 904 So. 2d 711.

⁷⁸ Tenney v. Burlington N. & Sante Fe Ry. Co., 2003-1260 (La. 1/21/04), 863 So. 2d 526, 528.

⁷⁹ La. R.S. 13:850(B).

⁸⁰ La. Code Civ. Proc. art. 5185(B).

⁸¹ Id. at art. 5185(C).

⁸² Id. at art. 5186.

III. IFP Issues in Practice

Despite the IFP scheme outlined in Louisiana's Code of Civil Procedure, filing the proper documentation and obtaining IFP status can be difficult for qualified litigants. Part II discusses examples of some of the significant obstacles facing practitioners seeking IFP status for their clients. These examples are broken down into two general categories: (1) practices that actually conflict with Louisiana law and (2) practices that create obstacles for IFP practitioners, but have not been explicitly contemplated by Louisiana law.

A. IFP-Related Issues That Are Clearly Addressed by Louisiana Law

The following examples illustrate obstacles encountered by practitioners that conflict with Louisiana law but have been discussed in either the Code of Civil Procedure or in case law.

1. Only one traversal of an IFP affidavit is permitted.

The trial court has broad discretion to determine whether a litigant qualifies for IFP status,⁸³ but it must follow the procedures set forth in Articles 5183(B)(3) and 5184. An order granting IFP status may not be rescinded unless the court holds a hearing on a properly filed rule to traverse.⁸⁴ Under the Louisiana Code of Civil Procedure, an IFP affidavit may be traversed by either the adverse party or the clerk of court, but only one rule to traverse is permitted.⁸⁵ Any challenge to an IFP affidavit must be brought by rule to show cause, and the IFP litigant must be given an opportunity for a contradictory hearing. If, after the hearing, the court finds that the litigant is not entitled to proceed IFP, it must rescind the order.⁸⁶

Practitioners report that adverse parties sometimes seek to challenge a litigant's IFP status after receiving an unfavorable ruling. This practice risks turning the traversal procedure into a tool of retaliation. To protect IFP litigants' access to justice, courts must adhere to the strict procedural safeguards: a single traversal, initiated by formal rule and sustained with a full contradictory hearing.

⁸³ Perry v. Monistere, 2008-1629 (La. App. 1 Cir. 12/23/08), 4 So. 3d 850, 854.

⁸⁴ See Carbajal v. Carbajal, 02-1286 (La. App. 5 Cir. 1/17/03); Riley v. Lifeworks of New Orleans, 96-506 (La. App. 5 Cir. 6/19/96).

⁸⁵ La. Code Civ. Proc. art. 5184(A).

⁸⁶ La. Code Civ. Proc. art. 5184(B).

2. The clerk of court may not refuse to file pleadings submitted with a facially proper IFP affidavit

A clerk of court may not refuse to accept a litigant's filing of pleadings or other documents, so long as the IFP affidavit is facially valid. Article 5185 of the Louisiana Code of Civil Procedure expressly entitles an IFP litigant to receive "[a]ll services required by law of . . . [a] clerk of court . . . in, or in connection with, the judicial proceeding," including the right of "filing of pleadings and exhibits" without the prepayment of costs.⁸⁷

Though Article 5183 permits the court, clerk, or an adverse party to contest IFP eligibility through a rule to traverse,⁸⁸ the mechanism for such review does not authorize clerks to block filings at the threshold. Any such affidavit requires judicial, not clerical, review. A clerk's refusal to file such pleadings violates Louisiana's Code of Civil Procedure and could be challenged with a writ of mandamus.⁸⁹

3. The court (or the clerk of court) may not refuse to accept new pleadings or initiate a new suit due to unpaid costs from a different case.

Under Louisiana law, neither a court nor a clerk of court may refuse to accept new pleadings or deny the filing of a new lawsuit simply because the IFP litigant owes outstanding court costs from a prior matter. The practice contravenes the constitutional guarantee of access to the courts.

The Third Circuit confirmed this principle in Hawkins v. City of Jennings, where the plaintiff filed suit against the city and police officers, asserting civil rights violations during his detention by the officers.⁹⁰ The plaintiff represented himself in connection with the claim and obtained IFP status. At the time of his civil rights claim, the plaintiff also had suits pending in another court involving the same defendants.⁹¹

On the date of trial for the state court claims, the plaintiff was not present. The judge stated that no order was submitted to the court to have the plaintiff transported to the court from the correctional facility. The judge granted the defendants' motion to dismiss the case at the plaintiff's expense and awarded attorney's fees to the defendants. The judge further ordered the clerk of court to refuse additional filings in any other matters, including those that remained pending after the instant case, from the plaintiff until the awarded attorney's fees and costs incurred in this case had been paid. The plaintiff filed a motion for a new trial, which was denied. The plaintiff appealed

⁸⁷ La. Code Civ. Proc. art. 5185(A)(1).

⁸⁸ La. Code Civ. Proc. art. 5183.

⁸⁹ See generally, Aucoin v. Fidelity & Cas. Co. of New York, 7503 (La. App. 1 Cir. 7/1/68), 212 So. 2d 748; State ex rel. Aucoin v. Blakeman, 7364 (La. App. 1 Cir. 3/4/68), 207 So. 2d 860.

⁹⁰ Hawkins v. City of Jennings, 97-1291 (La. App. 3 Cir. 3/6/98); 709 So. 2d 292, 293.

⁹¹ Id.

the denial, arguing that he attempted to have an order permitting him to be present at the trial signed, but it was refused and returned to him.⁹²

The Third Circuit affirmed the trial court's denial of the plaintiff's motion for a new trial due to the plaintiff's failure to timely request a new trial; however, the appellate court reversed the portion of the judgment ordering the clerk of court to refuse additional filings until the attorney's fees and court costs were paid.⁹³ The Third Circuit concluded: "the trial court's order which prevented filing in both the instant matter, as well as all filings in any other proceeding or future suit the plaintiff may have a right to bring, is violative of [Section 22 of the Louisiana Constitution] and, accordingly, must be reversed."⁹⁴ It further found that "the trial court committed legal error in ordering the clerk of court to refuse to accept any type of filing by the plaintiff, and reverse[d] this portion of the judgment."⁹⁵

Practitioners report ongoing violations of this rule in certain parishes, where clerks or courts instruct litigants that they must first pay off debts from earlier IFP cases before filing anew. These practices may effectively deny citizens' access to the court and are unlawful under the Louisiana Constitution.

4. The clerk of the court may not withhold issuance of orders or judgments in an IFP proceeding because of non-payment of costs.

Under Louisiana law, the clerk of court may not condition the issuance, certification, or delivery of court orders or judgments on the payment of costs by the IFP litigant. As discussed, an IFP litigant is entitled to, among other things, the "services required by law of a . . . clerk of court . . . in, or in connection with, the judicial proceeding, including but not limited to . . . the certification of copies of notarial acts and public records . . ."⁹⁶

This principle was confirmed by the First Circuit in Carline v. Carline, where the plaintiff was permitted to proceed IFP in a divorce proceeding.⁹⁷ The judgment granting the divorce had been rendered in open court and was signed by the judge.⁹⁸ In response to the plaintiff's request for a certified copy of the judgment, the clerk of court refused to release a copy of the judgment until the plaintiff paid the outstanding court costs.⁹⁹ The trial court dismissed the IFP plaintiff's writ of mandamus against the clerk of court.¹⁰⁰ Relying on Article 5185, the First Circuit reversed, holding that the IFP plaintiff was entitled to a certified copy of the judgment because proceeding IFP "surely includes for the pauper the certification of a copy of a portion of the public record in

⁹² Id.

⁹³ Id. at 294-95.

⁹⁴ Id. at 295.

⁹⁵ Id.

⁹⁶ La. Code Civ. Proc. art. 5185(A)(1).

⁹⁷ Carline v. Carline, 93-1505 (La. App. 1 Cir. 10/7/94), 644 So. 2d 835, 837.

⁹⁸ Id.

⁹⁹ Id. at 836.

¹⁰⁰ Id.

the judicial proceeding.”¹⁰¹ The First Circuit issued a writ of mandamus to the clerk of the court, and required the clerk to pay the costs associated with the appeal.¹⁰²

A clerk of court should not refuse to release a judgment in an IFP proceeding pending payment of costs. Doing so would deprive an IFP litigant of the rights provided by Article 5185 and may be challenged by a writ of mandamus. Refusing to release a judgment pending payment of court costs may also cause the clerk to be taxed with costs under the rationale of Carline.

5. It is unlawful to charge a successful IFP litigant for any portion of court costs.

A litigant who has been granted IFP status and secures a favorable judgment cannot be charged for any portion of the court costs associated with the proceeding. No fees should be assessed against the IFP litigant before the final adjudication unless the order granting IFP status is rescinded. Furthermore, liability for court costs is determined by the outcome of the proceeding. Under Article 5186, when judgment is rendered in favor of an IFP litigant, the party cast in judgment becomes responsible for the court costs.¹⁰³ Article 5188 confirms that only unsuccessful IFP litigants shall be responsible for the payment of court costs.¹⁰⁴ If an IFP litigant is unsuccessful, a public officer must prepare an affidavit of the account and record it in the mortgage records.¹⁰⁵ Such an affidavit has the effect of a judgment for the amount of the costs incurred.¹⁰⁶

Despite this statutory clarity, courts have on several occasions improperly assessed costs to successful IFP litigants, particularly in uncontested domestic matters. The appellate courts have repeatedly reversed such practices.

In Spence v. Spence, the IFP plaintiff secured a judgment increasing child support, though not spousal support as sought.¹⁰⁷ The trial court assessed her for the cost of transcribing the evidence while charging all other expenses to the defendant.¹⁰⁸ The Third Circuit reversed this portion of the cost judgment, holding that because the plaintiff was granted the right to proceed IFP and a favorable judgment, the losing party must bear all court fees. Accordingly, the costs of the trial court proceeding, as well as the appeal, were taxed to the defendant.¹⁰⁹

¹⁰¹ Id.

¹⁰² Id. at 837.

¹⁰³ La. Code Civ. Proc. art. 5186.

¹⁰⁴ La. Code Civ. Proc. art. 5188. Article 5188 provides exceptions under Articles 1920 and 2164, which concern judgements for costs against a party that the trial court considers equitable. *See* La. Code Civ. Proc. art. 1920 (“Unless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause. Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable.”); La. Code Civ. Proc. art. 2164 (“The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.”).

¹⁰⁵ La. Code Civ. Proc. art. 5186.

¹⁰⁶ Id.

¹⁰⁷ Spence v. Spence, 84-197 (La. App. 3 Cir. 3/6/85), 465 So. 2d 155, 157.

¹⁰⁸ Id. at 157-58.

¹⁰⁹ Id. at 158.

In Porter v. Porter, the Second Circuit held that a deputy clerk's post-judgment filing assessing costs against a divorce petitioner who had prevailed IFP was a legal error.¹¹⁰ The plaintiff first obtained a preliminary default. When the court entered judgment in the plaintiff's favor at a subsequent confirmation hearing, the clerk of court stated on the record, "Cost, your honor. A cost assessment for the pauper case." The judge replied, "Right. If you'll just stamp it there. All right, taken care of that. Thank you, ma'am."¹¹¹

The judgment did not specify who was responsible for the costs, but the clerk of court later filed a document entitled "Orders of Court" that said "[i]t is ordered that court costs be paid by the petitioner."¹¹² This document was signed by a deputy clerk of court, not a judge. The IFP litigant argued that the court erred by requiring her to pay court costs.¹¹³

The Second Circuit agreed, finding that although the Louisiana Code of Civil Procedure Article 1920 grants the trial court equitable discretion to "tax costs against any party," this discretion is limited by Article 5186, which requires costs to be paid by the party against whom judgment is rendered.¹¹⁴ The trial court "committed legal error in assessing costs against the party who took and confirmed the default."¹¹⁵

Similarly, in Yarls v. Yarls, the Fourth Circuit reversed a judgment that charged a prevailing IFP plaintiff with half of the court costs in an uncontested divorce.¹¹⁶ The trial court granted a default judgment and charged the plaintiff with half the court costs. Rather than signing the plaintiff's proposed judgment, the court prepared and signed its own judgment "decreeing a divorce 'between the parties'" but failed to include the names of the parties or that the judgment was in the plaintiff's favor.¹¹⁷ The plaintiff appealed.

Like in Porter, the Yarls court acknowledged that a trial court's discretion to tax costs under Article 1920 is limited by Article 5186.¹¹⁸ The Yarls Court emphasized that a default judgment is entered against a party who failed to answer the petition and amended the judgment accordingly.¹¹⁹ The court further reversed the judgment insofar as it required the plaintiff to pay half of all court costs. All costs were taxed to the defendant.¹²⁰

The Fourth Circuit again addressed this issue in Ulyanov v. Ulyanov.¹²¹ In this IFP divorce proceeding, the trial court entered a judgment of divorce on the plaintiff's motion to confirm

¹¹⁰ Porter v. Porter, 46,754-CA (La. App. 2 Cir. 12/14/11), 79 So. 3d 1287, 1289.

¹¹¹ Id., at 1288.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id., at 1289.

¹¹⁵ Id.

¹¹⁶ Yarls v. Yarls, 2009-1173 (La. App. 4 Cir. 1/27/10), 30 So. 3d 1101, 1101.

¹¹⁷ Id.

¹¹⁸ Id., at 1102.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Ulyanov v. Ulyanov, 2009-0642 (La. App. 4 Cir. 9/23/09), 23 So. 3d 380, 381.

default and charged the plaintiff with the cost for filing the divorce action and ordered her to “pay all costs within (90) ninety days of the signing of [the] judgment.”¹²² On appeal, the Fourth Circuit reversed the portion of the judgment assessing the plaintiff with all costs, citing Article 5186.¹²³ It further noted the absence of any evidence that the plaintiff’s right to proceed IFP had been traversed or rescinded.¹²⁴

The First and Third Circuits also reached similar conclusions. In Cage v. Cage, the trial court granted an indigent litigant’s petition for divorce by default and charged the costs to both parties.¹²⁵ On appeal, the First Circuit found that the trial court abused its discretion because Article 5186 precluded the sharing of court costs when a judgment is rendered in favor of an IFP litigant. The defendant was charged with all costs associated with obtaining the divorce decree as well as the appeal.¹²⁶ Likewise, in Holloway v. Holloway, the trial court ordered a plaintiff who obtained a judgment of divorce to pay one-third of the costs, and the plaintiff appealed.¹²⁷ The Third Circuit held that the trial court clearly erred by ordering the IFP plaintiff to pay costs, and rendered judgment ordering the defendant to pay all costs associated with the trial court proceeding.¹²⁸

These rulings reaffirm that prevailing IFP litigants cannot lawfully be assessed court costs. Any judgment to the contrary violates Articles 5186 and 5188 and should be reversed on appeal.

6. A non-incarcerated, successful IFP litigant may not be placed on a court-ordered payment plan for litigation costs.

A litigant who has been granted IFP status has no obligation to pay court costs either in advance or as they accrue.¹²⁹ Further, the clerk of court may not require an IFP litigant to pay his or her court costs in installments. Article 5181 is unequivocal: court costs are waived unless and

¹²² Id.

¹²³ Id.; see La. Code Civ. Proc. art. 5186.

¹²⁴ Id.; see also Ford v. Ford, 2009-1494 (La. App. 4 Cir. 2/24/10), 32 So. 3d 989, 990; Snowton v. Snowton, 2009-0600 (La. App. 4 Cir. 9/30/09), 22 So. 3d 1111, 1112; Williams v. Williams, 98-2899 (La. App. 4 Cir. 4/28/99), 732 So. 2d 1243, 1244; Smith v. Smith, 99-0365 (La. App. 4 Cir. 5/5/99), 733 So. 2d 729, 730.

¹²⁵ Cage v. Cage, 99-2072 (La. App. 1 Cir. 9/22/00), 809 So. 2d 144, 144.

¹²⁶ Id.

¹²⁷ Holloway v. Holloway, 2001-0273 (La. App. 3 Cir. 6/6/01), 787 So. 2d 600, 600.

¹²⁸ Id.; see also Stapleton v. Stapleton, 2005-1035 (La. App. 3 Cir. 2/1/06); 922 So. 2d 1234, 1235 (Trial court judgment charging husband who was granted right to proceed IFP in his divorce proceeding with half of costs associated with the divorce was reversed by the Third Circuit); Whatley v. Whatley, 01-0105 (La. App. 3 Cir. 5/2/01) (“Article 5186 provides that when a judgment is rendered in favor of an indigent party, the party against whom the judgment is rendered shall be condemned to pay all costs due. According to the record, Ms. Whatley is an indigent party. She was improperly cast for costs. We reverse the portion of the judgment assessing court costs against her and render judgment against her former spouse. The appellee will pay the costs of this appeal.”); Michel v. Michel, 00-01540 (La. App. 3 Cir. 11/2/00) (“The trial court erred in granting the plaintiff-realtor’s request for pauper status then imposing reduced costs upon her. Once plaintiff-realtor was granted pauper status she was relieved of the burden of paying costs in advance or as they accrue or furnishing security.”).

¹²⁹ La. Code Civ. Proc. art. 5181. Article 5181 makes an exception for those persons incarcerated or imprisoned for the commission of a felony who wish to proceed without paying costs in advance or as they accrue and requires such litigants to advance costs in accordance with the schedule set forth in Article 5181.

until the IFP order is rescinded. The only exception arises for incarcerated individuals, for whom the court may impose installment payments subject to a specific statutory formula.¹³⁰

In Brownell v. Brownell, the district judge granted a litigant's IFP request but nevertheless ordered her to pay \$10.00 per month toward court costs.¹³¹ The plaintiff then filed a writ contesting the order insofar as it required her to make monthly payments. The appellate court reversed, finding that the plaintiff's financial situation had not changed and her IFP status had not been challenged. The trial court's imposition of a payment plan was therefore an abuse of discretion.¹³²

Similarly, in Smith v. Smith, the Second Circuit granted an IFP litigant's supervisory writ and held that the trial court's authority to "require an indigent litigant proceeding in forma pauperis to make periodical nominal deposits to defray costs . . . is limited by guidelines of Art. 5181 to those litigants who are imprisoned for the commission of a felony."¹³³ Accordingly, it reversed the trial court's ruling that required the non-incarcerated IFP litigant to pay the clerk of court \$10.00 per month until the costs were paid.¹³⁴

The IFP privilege is requested because those seeking it do not have the ability to pay court costs in advance or as they accrue. When a court grants the IFP litigant such status, it may not impose installment payments for court costs unless the exception for incarcerated individuals applies. Any contrary order is legally erroneous and subject to reversal.

7. An IFP litigant is not responsible for costs associated with the services of a curator or attorney appointed to represent an absentee or out-of-state defendant.

An IFP litigant is not required to pre-pay fees or costs associated with the appointment of an attorney or curator ad hoc to represent an absentee or out-of-state defendant. Under Article 5091, a court must appoint an attorney to represent a defendant who is a nonresident or absentee, provided certain jurisdictional requirements are met.¹³⁵ Article 5096 further states that the appointed attorney's fees are court costs and, therefore, fall within the protections afforded by IFP status.¹³⁶

In Jones v. Jones, the Louisiana Supreme Court held that requiring prepayment of such fees from an IFP litigant unlawfully infringed upon her constitutional rights.¹³⁷ In that case, the plaintiff was granted IFP status in connection with her petition for divorce. She requested the appointment of an attorney to represent the defendant, who was allegedly residing out of state. The trial court refused to appoint an attorney because the plaintiff was unable to pay the attorney's fees

¹³⁰ Id.; see also La. R.S. 15:1186(B)(2).

¹³¹ Brownell v. Brownell, 00-1803 (La. App. 3 Cir. 10/3/01), 799 So. 2d 587, 588.

¹³² Id. at 589.

¹³³ Smith v. Smith, 20955-CW (La. App. 2 Cir. 5/4/89), 543 So. 2d 608, 609.

¹³⁴ Id.; see also Henry v. Henry, 03-530 (La. App. 5 Cir. 5/13/03); Hampton v. Moten, 00-1394 (La. App. 5 Cir. 8/30/00).

¹³⁵ La. Code Civ. Proc. art. 5091.

¹³⁶ La. Code Civ. Proc. art. 5096.

¹³⁷ Jones v. Jones, 297 So. 2d 198, 198 (La. 1974).

and related expenses. The Court of Appeal affirmed that refusal. The Louisiana Supreme Court granted supervisory writs and reversed. It emphasized that Article 5091 mandates such appointments where the court “has jurisdiction over the person or property of the defendant, or over the status involved, and the defendant is a nonresident or absentee who has not been served with process, either personally or through an agent for the service of process, and who has not waived objection to jurisdiction.”¹³⁸ The Court also noted that Article 5096 provides that the appointed attorney’s fees “shall be taxed as Costs of court” to the plaintiff.¹³⁹ It concluded that conditioning the appointment of an attorney on payment of fees “abridge[s] her due process right to judicial determination of the merits of her case and of the equal protection of the laws.”¹⁴⁰ The Court concluded that since IFP plaintiffs are exempt from prepaying court costs, such fees may not be a condition precedent to such appointments.¹⁴¹

The Fourth Circuit reached a similar conclusion in Warren v. Warren, holding that a plaintiff proceeding IFP cannot be required to pre-pay a curator’s fee.¹⁴² In that case, an IFP plaintiff filed for divorce against his nonresident wife. He argued that “his divorce has been delayed and his constitutional rights violated by the required appointment of a curator ad hoc (whom he cannot pay) to represent his [out of state] wife . . .”¹⁴³ The plaintiff moved to dismiss the curator and serve the defendant via the Long Arm Statute. The Fourth Circuit held that “a plaintiff proceeding in forma pauperis is not required to pay a curator’s fee.”¹⁴⁴ Although the IFP provisions do not specifically reference curator fees, requiring their prepayment can obstruct the service to the defendant. The Fourth Circuit found no authority barring use of the Long Arm Statute in divorce proceedings, and held that questions regarding jurisdiction over nonresident defendants under La. R.S. 13:3201¹⁴⁵ must be resolved on a case-by-case basis.¹⁴⁶ Thus, it reversed the trial court’s refusal to dismiss the curator.

Likewise, in Atkins v. Atkins, the Third Circuit reversed a trial court’s order requiring an IFP litigant to pay a curator’s fee, citing both Article 5181 and Warren.¹⁴⁷

¹³⁸ Id. at 199 (citing, La. Code Civ. Proc. art. 5091).

¹³⁹ Id. (citing, La. Code Civ. Proc. art. 5096).

¹⁴⁰ Id. at 200. Pursuant to Article 1201, “[c]itation and service thereof are essential in all civil actions except summary and executory proceedings, divorce actions under Civil Code Article 102, and proceedings under the Children’s Code. Without them all proceedings are absolutely null.” La. Code Civ. Proc. art. 1201(A).

¹⁴¹ Jones, 297 So. 3d at 201.

¹⁴² Warren v. Warren, 93-C-0261 (La. App. 4 Cir. 8/4/93), 622 So. 2d 864, 865.

¹⁴³ Id.

¹⁴⁴ Id. at 866 (citation omitted).

¹⁴⁵ The opinion quotes the following portion of Section 13:3201: “A. A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the nonresident: (1) Transacting any business in this state . . . (6) Non-support of a child, parent, or spouse or a former spouse domiciled in this state to whom an obligation of support is owed and with whom the nonresident formerly resided in this state . . . B. In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.” La. R.S. 13:3201.

¹⁴⁶ Warren, 622 So. 2d at 868.

¹⁴⁷ Atkins v. Atkins, 01-00583 (La. App. 3 Cir. 7/16/01).

In summary, orders requiring IFP litigants to pay for court-appointed representation of absentee or out-of-state defendants are contrary to Louisiana law and may be challenged through a motion for rehearing, supervisory writ, or appeal.

8. An IFP litigant is not required to post a bond for costs or filing; only suspensive appeal bonds may be required when appealing a judgment suspensively.

An IFP litigant is not required to post a bond for court costs or filing fees. Section 13:4522 of the Louisiana Revised Statutes permits a defendant, before filing a pleading, to require a plaintiff or intervenor to provide security for the costs of the proceeding.¹⁴⁸ However, IFP litigants are expressly exempt from this requirement by Section 13:455.¹⁴⁹ The Second Circuit has found that the rules governing bonds for costs apply equally to bonds for attorneys' fees.¹⁵⁰

In Jones v. Anderson, the plaintiff filed suit against a city police officer and the City of Shreveport for injuries allegedly caused by the officer while on duty.¹⁵¹ The officer moved to require the plaintiff to post a bond for attorneys' fees pursuant to La. R.S. 42:261(D), which applies to public officials.¹⁵² The trial court granted the officer's motion.¹⁵³ The plaintiff subsequently filed a motion for a new trial, which was denied, and a motion to proceed IFP, which was granted.¹⁵⁴ Nevertheless, the trial court ruled that the plaintiff was still required to post a bond for attorneys' fees. When the plaintiff failed to do so, his case was dismissed.¹⁵⁵ On appeal, the Second Circuit reversed, holding that the rules governing bonds for costs are equally applicable to the attorneys' fee bond. The court concluded that "since no bond for cost can be required of a pauper, neither can a bond for attorneys' fees be required" upon a finding of indigency.¹⁵⁶

¹⁴⁸ La. R.S. 13:4522.

¹⁴⁹ Id. The full text of La. R.S. 13:4522 states: "The defendant before pleading in all cases may by motion demand and require the plaintiff or intervenor to give security for the cost in such case, and on failure to do so within the time fixed by the court such suit or intervention, as the case may be, shall be dismissed without prejudice. This section shall not apply to the Parish of Orleans and to cases brought in forma pauperis, nor to the state or any political subdivision thereof."

¹⁵⁰ Jones v. Anderson, 12078 (La. App. 2 Cir. 5/1/73), 277 So. 2d 697, 698; *see also* Bolden v. City of Shreveport, 11981 (La. App. 2 Cir. 1/9/73), 278 So. 2d 138, 142; Gilmore v. Rachl, 202 La. 652 (La. 1943).

¹⁵¹ Jones, 277 So. 2d at 698.

¹⁵² La. R.S. 42:261 has been amended and the provision concerning the attorneys fees bond is provided in La. R.S. 42:261(E); however, Subsection E has since been declared unconstitutional. In Lafourche Par. Council v. Breaux, the First Circuit explained that the Louisiana Supreme Court had found that "the requirement that bond for attorney fees be furnished before proceeding to trial is unconstitutional and violative of the equal protection clauses of the state and federal constitutions. The court also found that the provision denied litigants to due process and open access to state courts." 2002-1565 (La. App. 1 Cir. 5/9/03), 845 So. 2d 645, 649, citing, Detraz v. Fontana, 416 So. 2d 1291 (La. 1982).

¹⁵³ Jones, 277 So. 2d at 698.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

Similarly, in Bolden v. City of Shreveport, a plaintiff filed suit against a police officer and the City of Shreveport in connection with the death of her son.¹⁵⁷ The defendants sought both a bond for costs under La. R.S. 13:4522 and a bond for attorneys' fees under La. R.S. 42:261(D).¹⁵⁸ After the defendants filed a rule to show cause, the plaintiff filed a motion to proceed IFP, which the court granted. The trial court denied the defendants' request for a bond for costs but nevertheless ordered the plaintiff to post a bond for attorneys' fees. On appeal, the Second Circuit reversed, finding that the phrase "as in the case of bond for costs" referenced in La. R.S. 42:261(D) equates a bond for attorneys' fees with a bond for court costs.¹⁵⁹ The Court held that an indigent plaintiff who has been permitted to litigate without payment of costs under La. C.C.P. arts. 5181 et seq. cannot be required to furnish a bond for attorneys' fees.¹⁶⁰

An IFP litigant may not be required to post a bond for court costs or attorneys' fees. An order or judgment imposing such a requirement is inconsistent with Louisiana law and may deny the litigant access to the courts and due process.

9. An IFP litigant has a right to a jury trial without prepayment of costs.

An IFP litigant is entitled to a jury trial and to the services of jurors.¹⁶¹ In McCoy v. Winn-Dixie Louisiana, Inc., the plaintiffs, husband and wife, brought an action for damages arising from injuries the wife suffered when she slipped and fell in the defendant's store.¹⁶² The plaintiffs requested a jury trial. When the jury bond was fixed at \$1,000.00, the plaintiffs filed a motion requesting that the wife be permitted to proceed IFP. The wife's claim sought recovery for her personal injuries, while the husband's claim was for medical expenses and lost earnings. The husband waived the bond. The trial court denied the wife's request to proceed IFP, and the appellate court denied her application for supervisory writs.¹⁶³ In denying the writ application, the appellate court reasoned that allowing the wife to proceed IFP alone while her husband remained a co-plaintiff would "make ludicrous the fundamental concept" of the IFP provisions. It emphasized that the couple was jointly seeking recovery for all damages stemming from the wife's injury, yet unwilling to bear the cost of a jury trial. While acknowledging that spouses could, in theory, file separate suits in different courts, the Court held that they should not be permitted to divide cost responsibilities within a single, cumulated action. Doing so would "set dangerous precedents" by allowing married plaintiffs to circumvent financial requirements based on their joint resources. The Court noted that two unrelated plaintiffs might be eligible for such relief in a single action, but concluded that the spouses' shared financial interest justified denying the motion.¹⁶⁴

¹⁵⁷ Bolden v. City of Shreveport, 11981 (La. App. 2 Cir. 01/9/73), 278 So. 2d 138, 143 (Bolen, J., dissenting).

¹⁵⁸ Id. at 144.

¹⁵⁹ Id. at 145.

¹⁶⁰ Id. at 146.

¹⁶¹ La. Code Civ. Proc. art. 5185(A)(3).

¹⁶² McCoy v. Winn-Dixie Louisiana, Inc., 345 So. 2d 1175, 1176 (La. 1977).

¹⁶³ Id. at 1176.

¹⁶⁴ Id. at 1178.

On further appeal, the Louisiana Supreme Court reversed. The Court found that the existence of community assets should not prevent the wife from proceeding IFP in an action for damages that, if awarded, would constitute her separate property.¹⁶⁵ It was uncontested that the wife, if filing suit alone, would have been eligible to proceed IFP.¹⁶⁶ The Court explained that the wife's decision to file a joint action with her husband should not defeat her eligibility for IFP status, where she alone lacked sufficient separate funds to post a jury bond in connection with a cause of action that is her separate property.¹⁶⁷

As such, an IFP litigant is entitled to a jury trial and to the services of jurors. A court may not require an IFP litigant to post a jury bond.¹⁶⁸

10. IFP status remains in effect through appeal unless explicitly rescinded.

Once granted, IFP status remains in effect through the appeal unless it is expressly rescinded.¹⁶⁹ No re-application is necessary solely because the matter proceeds to appellate review.

An IFP litigant may appeal a trial court judgment without prepayment of appellate filing fees.¹⁷⁰ Louisiana Code of Civil Procedure article 5185(A)(5) provides that an IFP litigant is entitled to all services required by law "in connection with" the proceeding, including appeals, until the order granting IFP status is rescinded.¹⁷¹ In Dowden v. Miller, the First Circuit made clear that once pauper status is granted, it extends automatically through appeal unless and until traversed.¹⁷² The appellate court must consider the appeal or writ application without requiring the prepayment of fees. The trial court may not impose additional requirements on the exercise of the IFP litigant's appellate rights. In particular, a court may not condition the filing or lodging of an appeal upon payment of appellate costs,¹⁷³ nor may it require the IFP litigant to make periodic

¹⁶⁵ Id. at 1177.

¹⁶⁶ Id. at 1178.

¹⁶⁷ Id.

¹⁶⁸ District Judges have, at times, struck juries when a bond has not been posted pursuant to La. Code Civ. Proc. art. 1734 regardless of IFP status, perhaps due to the expenses associated with impaneling jurors and financial strain on the courts. Article 1734 states: "A. Except as otherwise provided by R.S. 13:3105 et seq., when the case has been set for trial, the court shall fix the amount of the bond to cover all costs related to the trial by jury and shall fix the time for filing the bond, which shall be no later than sixty days prior to trial. Notice of the fixing of the bond shall be served on all parties. If the bond is not filed timely, any other party shall have an additional ten days to file the bond. B. When the bond has been filed, the clerk of court shall order the jury commission to draw a sufficient number of jurors to try and determine the cause, such drawing to be made in accordance with R.S. 13:3044." No authority concerning the relationship between La. Code Civ. Proc. art. 1734 and La. Code Civ. Proc. art. 5185(A)(3) has been located; however, a cash deposit in lieu of an Article 1734 bond may not be required of an IFP litigant. La. Code Civ. Proc. art. 1734.1.

¹⁶⁹ La. Code Civ. Proc. art. 5185(A).

¹⁷⁰ See Jolivet v. Jolivet, 386 So. 2d 707, 709 (La. 1980).

¹⁷¹ La. Code Civ. Proc. art. 5185(A).

¹⁷² Dowden v. Miller, 404 So. 2d 1270 (La. 1981).

¹⁷³ Richardson v. Say, 98-1094 (La. 5/29/98), 719 So. 2d 1271 ("Granted and transferred to the court of appeal for consideration on the merits without the payment of a filing fee"). See Riebow v. Riebow, 97-3093 (La. 1/19/98), 705

payments during the pendency of the appeal.¹⁷⁴ If the IFP litigant is unsuccessful on appeal, they may be taxed with costs, but these costs are assessed only after the final adjudication.¹⁷⁵ Appellate courts retain discretion to waive costs for an unsuccessful IFP litigant where appropriate.¹⁷⁶

Once IFP status is granted, the clerk of court must lodge the appeal and may not require payment of appellate filing costs. In Mason v. Hendrick, the Third Circuit reaffirmed that the clerk must process an appeal for an IFP litigant without prepayment of filing fees.¹⁷⁷ Similarly, in Walcott v. Dep't of Health, the court emphasized that clerks of court have no authority to delay or deny the lodging of an IFP appeal based on nonpayment.¹⁷⁸

11. Financial support from third parties may not be used to disqualify an otherwise eligible IFP litigant.

Financial assistance provided by third parties, such as family members, friends, or charitable organizations, may not be considered grounds to deny an otherwise eligible litigant the right to proceed IFP.

The Louisiana Supreme Court has long recognized that support from others does not defeat a litigant's indigent status.¹⁷⁹ In Fils v. Iberia, St. Mary & E. R.R. Co., the Court held that entitlement to proceed IFP does not require absolute destitution, stating that a litigant need not be "destitute even of a mattress upon which to lie, or a table upon which to eat, or a chair upon which

So. 2d 1086; *see also*, Kenner Reg'l Med. Ctr. v. Mensingh, 98-0186 (La. 1/22/98), 709 So. 2d 684, 685 ("Where relator is seeking review of the denial of an application to proceed in forma pauperis, the clerk of court shall allow the application to be filed without the payment of costs. [] Accordingly, the application is transferred to the court of appeal for consideration on the merits without the payment of a filing fee."); Cook v. Cook, 98-0023 (La. 1/9/98), 705 So. 2d 1087 ("Where relator is seeking review of the denial of an application to proceed in forma pauperis, the Clerk of Court shall allow the application to be filed without the payment of costs. Application transferred to the court of appeal for consideration on the merits without the payment of a filing fee."); Riebow, 705 So. 2d at 1086-87 ("Where relator is seeking review of the denial of an application to proceed in forma pauperis, the clerk of court shall allow the application to be filed without the payment of costs. Application transferred to the court of appeal for consideration on the merits without the payment of a filing fee."); Peterson v. Peterson, 691 So. 2d 664, 664-65 (La. 1997) ("The intent of our order in Language v. Language, [] was for the court of appeal to consider the merits of relators' argument that the procedure employed in this case for determining relators' pauper status violated La. Code Civ. Proc. arts. 5181-88. Accordingly, the case is remanded to the court of appeal to make a determination on the merits in this matter, based on the record before it."); Language v. Language, 681 So. 2d 350, 351 (La. 1996) (Writ application "transferred to the court of appeals for consideration on the merits without the payment of a filing fee.").

¹⁷⁴ Sandra Johnson v. M.J. Sauer, 2012-0022 (La. App. 4 Cir. 1/12/12).

¹⁷⁵ Carter v. Smith, 24,084 (La. App. 2 Cir. 10/28/92), 607 So. 2d 6, 8; Gibson v. Barnes, 91-0229 (La. App. 1 Cir. 4/10/92), 597 So. 2d 176.

¹⁷⁶ Harsh v. Calogero, 92-CA-0926 (La. App. 4 Cir. 2/26/93), 615 So. 2d 420, 423; La. Code Civ. Proc. art. 1920.

¹⁷⁷ Mason v. Hedrick, 19-113 (La. App. 3 Cir. 4/17/19), 268 So. 3d 1074, 1076.

¹⁷⁸ Walcott v. Dep't of Health & Valley Catering, No. 2021-0019, 2021 WL 1171179, at *1 (La. App. 1 Cir. Mar. 29, 2021). Case included in Appendix 3.

¹⁷⁹ Fils v. Iberia, St. Mary & E. R.R. Co., 82 So. 697, 700 (La. 1919); *see also*, Hollier v. Broussard, 2634 (La. App. 3 Cir. 3/12/69), 220 So. 2d 175, 177; In re Peters, 959 So. 2d 846 (La. 2007) (Financial assistance from attorney did not preclude pauper status).

to sit.”¹⁸⁰ If friends, charitable individuals, or other sympathetic parties are willing to assist a litigant with needs other than securing access to the courts, such assistance does not undermine the litigant’s right to IFP status. This principle was reaffirmed in Benjamin v. National Super Markets, Inc., where the Court again held that third-party assistance does not disqualify an applicant from pauper status.¹⁸¹ Similarly, the existence of a contingency fee agreement between a litigant and his or her attorney does not bar a finding of indigency or the grant of IFP status.¹⁸²

12. An IFP applicant who provides documentation of income under 125% of the federal poverty line is not required to complete Question No. 9 of the standardized affidavit.¹⁸³

An IFP applicant who demonstrates that his or her income is less than or equal to 125% of the federal poverty level is not required to complete Question No. 9 of the Louisiana Supreme Court’s standardized IFP Affidavit Form.¹⁸⁴ For District Courts, a party (other than an inmate) who seeks to proceed in forma pauperis must complete and file the affidavit set forth in the Uniform District Court Rules, Rule 8.0.¹⁸⁵

On the standardized IFP Affidavit Form, the paragraph immediately preceding Question 9 specifies that if the applicant is a client of a Legal Services Corporation-funded program, or a Pro Bono Project that receives referrals from such a program, and the applicant’s combined income from Questions 7 and 8 is at or below 125% of the federal poverty level, the applicant may skip all parts of Question 9 and proceed directly to Question 10.¹⁸⁶

Question 9 otherwise asks applicants to disclose any ownership interests in assets such as a house, automobile, truck, watercraft, livestock, machinery, stocks, bonds, certificates of deposit, other movable property, and bank accounts. It also requires disclosure of monthly expenses, including but not limited to rent, utilities, medical costs, daycare, child support, car payments, insurance, food, garnishments, credit card obligations, and financial loans.

Louisiana Code of Civil Procedure Article 5183 establishes that if a litigant seeking to proceed IFP submits documentation verifying either receipt of public assistance or income at or below 125% of the federal poverty level, a rebuttable presumption arises that the applicant qualifies to proceed without prepayment of court costs.¹⁸⁷

¹⁸⁰ Fils, 82 So. at 700.

¹⁸¹ Benjamin, 351 So. 2d at 141.

¹⁸² Jackson v. Aetna Life & Cas. Co., 7895 (La. App. 3 Cir. 6/25/80), 392 So. 2d 1073, 1074.

¹⁸³ See Appendix 2.

¹⁸⁴ See La. Code Civ. Proc. art. 5183.

¹⁸⁵ La. Dist. Ct. Unif. Rule 8.0.

¹⁸⁶ Question 7 asks for an applicant’s gross income, how he or she is paid, and for any other income and monthly deductions. Question 8 asks whether the applicant is married, lives with a spouse, whether the spouse is employed, his or her occupation and salary information, and whether the applicant and spouse receive any social security, disability, worker’s compensation, unemployment benefits, food stamps, child or spousal support payments.

¹⁸⁷ See La. Code Civ. Proc. art. 5183.

The Louisiana judiciary has confirmed this procedure. In Myers v. Berggreen, the Louisiana Supreme Court granted the plaintiff’s supervisory writ application, holding that because the plaintiff complied with the IFP Affidavit Form’s instructions, the trial court was required to rule on the merits of her pauper application.¹⁸⁸ In Buckley v. Gains, the Fifth Circuit held that where an IFP applicant states that she has no income in her petition, she is entitled to the rebuttable presumption under Article 5183 and to proceed IFP, unless and until her affidavit is traversed.¹⁸⁹

13. District courts may not impose IFP requirements beyond those authorized by the Louisiana Code of Civil Procedure or applicable Uniform District Court Rules.

Local district courts may not impose greater obligations on a party seeking to proceed IFP than those established by the Louisiana Code of Civil Procedure or applicable uniform court rules.

In Futch v. Coumes, the Louisiana Supreme Court addressed a district court rule that required an IFP applicant, his attorney, and the affiant attesting to the applicant’s inability to pay court costs to appear personally before the clerk of court to execute the affidavits.¹⁹⁰ The record indicated that a deputy clerk would “interrogate the litigant, requiring answers to a two-page questionnaire,” and only upon being satisfied with the responses would the clerk sign the IFP order.¹⁹¹ The Court granted certiorari and reversed.¹⁹²

The court explained that the local rule conflicted with the provisions of the Code of Civil Procedure, particularly Article 5183, by imposing additional procedural burdens not contemplated by statute.¹⁹³ The Court emphasized that the statutory scheme is designed to ensure the efficient and nontechnical exercise of the privilege for those entitled to it. Requiring a personal appearance and interrogation by the clerk could “inhibit access to the privilege by those entitled by law to exercise it” and frustrate the legislative intent behind the IFP procedures.¹⁹⁴ While district courts retain some discretion to regulate IFP applications, they may not impose procedures or obligations that conflict with or unduly burden the statutory right to proceed IFP. Local rules that exceed what the Code of Civil Procedure authorizes may be challenged.

14. An IFP Litigant is Entitled to Seek Expungement of His or Her Criminal Record Without the Pre-Payment of Costs

¹⁸⁸ Myers v. Berggreen, 2003-2022 (La. 11/7/03), 857 So. 2d 507.

¹⁸⁹ Buckley v. Gains, 00-1469 (La. App. 5 Cir. 10/2/00); *see also*, Boudoin v. Boudoin, 03-436 (La. App. 5 Cir. 5/2/03); Guidry v. Spahn, 02-238 (La. App. 5 Cir. 3/27/02); Goldman v. Goldman, 02-177 (La. App. 5 Cir. 2/28/02); Johnson v. Johnson, 98-533 (La. App. 5 Cir. 6/15/98).

¹⁹⁰ Futch v. Coumes, 58963 (La. 7/1/77), 347 So. 2d 1121, 1122.

¹⁹¹ Id. at 1122, n.2.

¹⁹² Id. at 1123.

¹⁹³ Id.; *see* La. Code Civ. Proc. art. 5183.

¹⁹⁴ Id.; *see also* Riley v. Lifeworks of New Orleans, 96-506 (“[T]he clerk of court’s procedure of employing a review and recommendation to the district judge prior to presentation of the order for signature violates the requirements of La. Code Civ. P. Art. 5184 that traversal of the party’s indigent status be by rule to show cause”).

A plaintiff seeking to expunge his or her criminal record is permitted by statute to proceed IFP.¹⁹⁵ Specifically, the Code of Criminal Procedure states that a litigant seeking expungement may proceed IFP according to the Code of Civil Procedure art. 5181.¹⁹⁶ Pursuant to art. 5181, a plaintiff that is granted IFP status, litigates the expungement “without paying the costs in advance or as they accrue or furnishing security therefor.”¹⁹⁷

A plaintiff seeking multiple expungements must seek an IFP for each expungement. The fact that a plaintiff is seeking multiple expungements may be used as evidence that an IFP should be granted because expungements are expensive, and the collective cost may be prohibitive for an indigent plaintiff. As in other instances involving IFPs, a judge can do one of the following when deciding on an IFP: (1) grant the IFP; (2) deny the IFP with written reasons; or (3) set the IFP for a hearing for more information.

It must be re-emphasized that a judgment in favor of the indigent party proceeding IFP waives all fees associated with the litigation, so a plaintiff who succeeds in expunging his or her record *shall not* be required to pay any of the costs.¹⁹⁸ An expungement order is considered a favorable judgment for the plaintiff. If the plaintiff is unsuccessful in expunging his or her records, the court may require the plaintiff to pay the costs associated with litigation at the end of the case.¹⁹⁹

Additionally, the court cannot require a plaintiff to pay the filing fee for the expungement if the plaintiff files an IFP before or with the expungement. The IFP does not need to be granted in advance when it is filed together with the other filings for expungement. The court clerk is required to collect all processing fees at the time the motion for expungement is filed.²⁰⁰ The clerk is thus permitted to collect fees for filing an expungement if the party fails to file an IFP before or contemporaneously with the other filings.²⁰¹ A court cannot require the plaintiff to file for expungement before seeking an IFP because the cost of filing the expungement may be prohibitive for the plaintiff.

15. An IFP Litigant is Entitled to Proceed IFP in a Succession Proceeding

An IFP litigant in a succession proceeding is not required to pay costs in advance or as they accrue pursuant to the Code of Civil Procedure art. 5181.²⁰² It is common, however, for courts to incorrectly deny a litigant’s IFP filing because there is no party to cast costs against.²⁰³ The lack of a party to cast costs against is not a reason a judge can deny a litigant’s IFP.

¹⁹⁵ La. Code Crim. Proc. art. 983(L).

¹⁹⁶ Id.

¹⁹⁷ La. Code Civ. Proc. art. 5186.

¹⁹⁸ Id.

¹⁹⁹ La. Code Civ. Proc. art. 5188.

²⁰⁰ La. Code Crim. Proc. art. 983(C).

²⁰¹ La. Code Crim. Proc. art. 983(L); La. Code Civ. Proc. art. 5181.

²⁰² La. Code Civ. Proc. art. 5181.

²⁰³ La. Code Civ. Proc. art. 3422.

To further enshrine a litigant’s right to proceed IFP in successions, the legislature, in the 2025 Regular Session, enacted an amendment to the Code of Civil Procedure that amends articles 5181 and 5186.²⁰⁴ The bill was initially introduced on the recommendation of the Louisiana State Law Institute. As of June 2025, the amendment passed favorably in both the House and Senate and was subsequently signed by the governor. The amendment adds language to Article 5181, which would change the provision to state:

Except as provided in Paragraph B of this Article, an individual who is unable to pay the costs of court because of poverty and lack of means may prosecute or defend a judicial proceeding, *including a succession proceeding*, in any trial or appellate court without paying the costs in advance or as they accrue or furnishing security therefor.²⁰⁵

The amendment also adds language to article 5186, which allows the court to “order the payment from succession assets of all costs due to any public officer.”²⁰⁶ The statute, thus, clarifies the court’s treatment of costs in succession cases with IFP litigants. The IFP litigant may not be required to pay any costs, from the succession assets or otherwise, until the conclusion of the succession proceeding.²⁰⁷

B. IFP Issues That Arise in Practice But That Have Not Been Directly Addressed by Statute and/or Case Law

1. May a Judicial Lien be Asserted Against an IFP Litigant?

Article 5187 provides that the clerk of court shall have a lien for the payment of court costs in the event the IFP proceeding is compromised or dismissed, and such compromise or dismissal does not provide for the payment of court costs.²⁰⁸ Article 5187 states, in pertinent part:

No release of a claim or satisfaction of a judgment shall be effective between the parties to a judicial proceeding in which one of the parties has been permitted to litigate without the payment of costs unless all costs due the clerk of court have been paid. The clerk of court shall have a lien for the payment of such costs superior to that of any other party on any monies or other assets transferred in settlement of such claim or satisfaction of such judgment and shall be entitled to collect reasonable attorney’s fees in any action to enforce this lien for the payment of such costs.²⁰⁹

Once a litigant receives IFP status, the subject proceeding cannot be dismissed prior to final judgment unless the court costs are paid or all counsel of record certify that no compromise

²⁰⁴ S.B. 67, Act No. 34, amends La. Code Civ. P. art. 5186(B) (effective Aug. 1, 2025).

²⁰⁵ Id. (emphasis added).

²⁰⁶ Id.

²⁰⁷ La. Code Civ. Proc. art. 5181.

²⁰⁸ La. Code Civ. Proc. art. 5187; *see also*, Hon. Dan Foley, La. Att’y Gen. Op. No. 84-79 (Mar. 22, 1984).

²⁰⁹ La. Code Civ. Proc. art. 5187.

has been effected and none is contemplated.²¹⁰ The Attorney General’s Office has held that a case may be dismissed by a plaintiff prior to judgment “without the payment of costs incurred as long as there has been no settlement or compromise made by the defendant, or money paid by the defendant to the plaintiff.”²¹¹ Court costs must be paid if there is a compromise.²¹² If the IFP litigant is granted any of the relief requested through compromise, costs become due.²¹³

2. May a Court Deny an IFP Applicant’s Request to Proceed IFP if the Applicant is LSC (Legal Services Corporation) eligible?

An applicant is not entitled to the benefit of the Article 5183 rebuttable presumption simply because the applicant may be eligible for Legal Services Corporation. To take advantage of the rebuttable presumption, the applicant must either (1) be receiving public assistance benefits or (2) have an income less than or equal to 125% of the federal poverty level. If an IFP applicant is LSC eligible because he or she is receiving public assistance or meets the poverty level requirement, then there is a rebuttable presumption that the LSC eligible litigant is entitled to IFP status because he or she meets the requirements set forth in the Article 5183, not simply because he or she is LSC eligible.

3. May a Duty Judge Grant an Application to Proceed IFP?

Uniform Rule 3.2 provides:

Each judicial district or court may designate one or more of its members to act as a duty judge. In civil proceedings, the duties assigned to a duty judge shall comply with La. Code Civ. Proc. art. 253.3. The identity of each duty judge shall be prominently displayed in a manner deemed appropriate by the court. If the court chooses to use multiple duty judges to perform various functions, the delineation of each duty judge’s duties shall also be prominently displayed. The length of term and duties of the duty judge shall be at the sole discretion of the judges in each judicial district or court sitting en banc. For those judicial districts or courts that have designated duty judges, the office hours for performance of his or her duties, and the duties assigned, are listed in Appendix 3.2.²¹⁴

Article 253.3 of the Code of Civil Procedure permits duty judges to hear and sign orders permitting a litigant to proceed IFP.²¹⁵ In addition, a duty judge may sign an order specifically

²¹⁰ Id.

²¹¹ Hon. Claude R. Sledge, La. Att’y Gen. Op. No. 90-51 (May 4, 1990).

²¹² Id.

²¹³ Id.

²¹⁴ La. Dist. Ct. Unif. Rule 3.2.

²¹⁵ La. Code Civ. Proc. art. 253.3(A)(3) states, in pertinent part: “A. In any case assigned pursuant to Article 253.1, a duty judge shall only hear and sign orders or judgments for the following: . . . (3) Entry of preliminary defaults, confirmation of defaults, stipulated matters, examination of judgment debtors, orders to proceed in forma pauperis, orders allowing the filing of supplemental and amending petitions when no trial date has been assigned, orders allowing incidental demands when no trial date has been assigned, orders allowing additional time to answer, and judicial commitments.”

authorized by the judge to whom the case is assigned.²¹⁶ When the duty judge signs an order or judgment pursuant to Article 253.3, he or she does not acquire jurisdiction over any other matters in the case.²¹⁷ After the duty judge's ruling, the judge assigned to the proceeding must hear other matters pertaining to the proceeding.²¹⁸

4. What Proof or Evidentiary Requirements Must be Met with regard to the Traversal of an IFP Applicant's Affidavit?

While Louisiana law allows an opponent, or the clerk of court, to traverse an IFP application, the law does not address the evidentiary guidelines applicable to traversing an IFP application. The party or clerk traversing the affidavit must file a rule to show cause against the applicant to show why the court's order allowing the litigant to proceed IFP should not be rescinded.²¹⁹ The court may reconsider an order granting a litigant IFP status on its own motion at any time in a contradictory hearing.²²⁰ As noted, an IFP litigant's status may be reconsidered at any time if a judge has cause to believe the litigant's circumstances have changed or that the order was improperly granted.²²¹ For example, an order granting IFP status could be rescinded if the IFP litigant's financial circumstances improved after the court granted the order.²²² Abusing the IFP privilege by embellishing or omitting pertinent facts relative to the IFP litigant's financial condition²²³ or repeatedly filing frivolous pleadings²²⁴ has resulted in the denial or revocation of pauper status.²²⁵ Reconsideration, however, must occur after an evidentiary hearing when rescission of the IFP order is dependent upon contested issues of fact.²²⁶ The "issue of fact" standard is a judicial doctrine; it has not been codified by the legislature.²²⁷

IV. Conclusion

The United States judicial system, including the courts of Louisiana, grants all persons the privilege of receiving access to justice regardless of whether the litigant is impoverished. Litigants above and below the federal poverty line are entitled to IFP status, and misinterpretations and misunderstandings about the law should not prevent these litigants from seeking justice.

²¹⁶ La. Code Civ. Proc. art. 253.3(C).

²¹⁷ La. Code Civ. Proc. art. 253.3(D).

²¹⁸ Id.

²¹⁹ Id.

²²⁰ La. Code Civ. Proc. art. 5183.

²²¹ City Stores, 268 So. 2d at 663.

²²² See Dilley v. Phillips Petroleum Co., 2762 (La. App. 1 Cir. 12/21/45), 24 So. 2d 209; *see also Gilmore v. Rachl*, 12 So. 2d 669 (La. 1943).

²²³ Ainsworth v. Ainsworth, 2003-1626 (La. App. 4 Cir. 1/9/04); 860 So. 2d 104, 107-09.

²²⁴ Mendonca v. Tidewater, Inc., 2011-0318 (La. App. 4 Cir. 9/7/11); 73 So. 2d 407, 415.

²²⁵ Ainsworth, 860 So. 2d at 108-09; Mendonca, 73 So. 2d at 415.

²²⁶ *See City Stores*, 268 So. 2d at 663.

²²⁷ Id. The Supreme Court of Louisiana cites to an earlier version of art. 5184 in City Stores to stand for the "issue of fact" requirement; however, the 1990 amendments to the statute do not disrupt the "issue of fact" principle.

Judges have a moral and ethical responsibility to “administer justice without respect to persons, and do equal right to the poor and to the rich.”²²⁸ IFP litigants must not be forced to prepay costs, meet additional unnecessary requirements, or be denied their day in court. The legislature enacted the IFP provisions of Louisiana’s Code of Civil Procedure to ensure this privilege for its citizens.

²²⁸ 28 U.S.C. § 453.