

# PROPOSED TEXAS RULE OF CIVIL PROCEDURE 148

—taken from the TRCP RECODIFICATION PROJECT (December 1997)—

## Rule 148. Affidavit on Indigency

(a) *Affidavit*. In lieu of paying or giving security for costs of an original action, a party who is unable to afford costs must file an affidavit as herein described. A “party who is unable to afford costs” is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. Upon the filing of the affidavit, the clerk must docket the action, issue citation and provide other customary services as are provided any party.

(b) *Contents of Affidavit*. The affidavit must contain complete information as to the party’s identity, nature and amount of governmental entitlement income, nature and amount of employment income, other income, (interest, dividends, etc.), spouse’s income if available to the party, property owned (other than homestead), cash, or checking account, dependents, debts, and monthly expenses. The affidavit must contain the following statements: “I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct.” The affidavit must be sworn before a notary public or other officer authorized to administer oaths. If the party is represented by an attorney contingency, due to the party’s indigency, the attorney may file a statement to that effect to assist the court in understanding the financial condition of the party.

(c) *IOLTA Certificate*. If the party is represented by an attorney who is providing free legal services, without contingency, due to the party’s indigency and the attorney is providing services either directly or by referral from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate. The certificate must confirm that the party has been screened for income certificate. The certificate must confirm that the party has been screened for income eligibility under the IOLTA income guidelines by the IOLTA-funded program and the program represented that it has screened the party for income eligibility under the IOLTA income guidelines. A party’s affidavit of inability accompanied by an attorney’s IOLTA certificate may not be contested.

(d) *Contest*. The defendant or the clerk may contest an affidavit that is not accompanied by an IOLTA certificate by filing a written contest giving notice to all parties, provided that temporary hearings will not be continued pending the filing of the contest. If the court finds at the first regular hearing in the course of the action that the party (other than a party receiving a governmental entitlement based on indigency) is able to afford costs, the party must pay the costs of the action. Reasons for such a finding must be contained in an order. Except with leave of court, no further steps in the action will be taken by a party who is found able to afford costs until payment is made. If the party’s action results in monetary award, and the court finds sufficient monetary award to reimburse costs, the party must pay the costs of the action. If the court finds that another party to the suit can pay the costs of the action, the other party must pay the costs of the action.

(e) *Attorney’s Fees and Costs*. Nothing herein will preclude any existing right to recover attorney’s fees, expenses or costs from any other party.

**[Current Rule: Tex. R. Civ. P. 145]**