

**Rule 1.40** [In Forma Pauperis] Application to Waive Fees and Costs (In Forma Pauperis).

- (a)** [Pa.R.C.P. No. 240 shall apply in every action or proceeding before a court covered by these Rules.] A party who is without financial resources may seek or obtain a waiver of certain fees and costs pursuant to Pa.R.J.A. 1990.
- (b)** Dismissal for Frivolous Action. Nothing in Pa.R.J.A. 1990 shall preclude the court from sua sponte dismissing an underlying action, which is filed contemporaneously with an application to waive fees and costs, as frivolous.

[Explanatory] Comment: [Under Pa.R.C.P. No. 240, a party who is found by the court to be without financial resources to pay the costs of filing a legal paper or other costs of an action or proceeding before the court shall have such costs waived.] Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs (In Forma Pauperis)) sets forth the procedure for seeking or obtaining a waiver of the payment of certain fees and costs. See Pa.R.J.A. 1990(a). The eligibility criteria at Pa.R.J.A. 1990(c) should inform the party whether to proceed by application or praecipe. This [Rule] rule does not apply in matters before a Register of Wills.

Subdivision (b) enables the court to eliminate frivolous lawsuits involving a party who is requesting a waiver of fees and costs. The effect of such lawsuits on the judicial system was stated by the Supreme Court of the United States in *Neitzke v. Williams*, 490 U.S. 319 (1989):

We recognize the problems in judicial administration caused by the surfeit of meritless *in forma pauperis* complaints in the federal courts, not the least of which is the possibility that meritorious complaints will receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints.

*Id.* at 326. This definition is virtually identical in its statement with the definition of the Supreme Court of Pennsylvania in *Robinson v. Com., Pa. Board of Probation and Parole*, 582 A.2d 857, 860 (Pa. 1990) defining the term “frivolous” as used in Pa.R.A.P. 2744 as “an appeal which lacks any basis in law or fact.”