

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

FEB 26 1997

NANCY DOHERTY, CLERK

By Y. Kelly
Deputy

MISCELLANEOUS ORDER NO. 55

Prisoner In Forma Pauperis Proceedings

The statute governing *in forma pauperis* proceedings is 28 U.S.C. §1915. This statute requires a prisoner to pay the full filing fee in an *in forma pauperis* proceeding; however, a lawsuit may be commenced without prepayment of the full fee.


With the consent of the judges of this Court, the following procedures are adopted to comply with the requirements of 28 U.S.C. §1915. They apply to any prisoner complaint received by the Clerk on or after March 3, 1997 that is not accompanied by the full statutory filing fee or security therefor.

1. The Clerk of Court shall file the case on the regular civil docket.
2. The prisoner shall submit an *in forma pauperis* declaration that contains the average monthly balance and average monthly deposits in the prisoner's inmate trust account for the six-month period immediately preceding the filing of the complaint certified by an official of the agency having custody of the prisoner. If the prisoner has been incarcerated less than six months, the average monthly balance and average monthly deposits during the period of incarceration shall be stated.
3. Unless otherwise directed by the presiding judge, the case shall automatically be referred without written order to the assigned magistrate judge. The magistrate judge shall, as he/she deems appropriate, determine if the prisoner should be allowed to proceed without prepayment of fees and judicially screen the complaint pursuant to 28 U.S.C. §1915, 28 U.S.C. §1915A, and/or 42 U.S.C. §1997e.
4. The district judge or magistrate judge shall assess the initial partial filing fee in accordance with 28 U.S.C. §1915(b). A copy of the filing fee order to be used for this purpose appears as Appendix One of this Miscellaneous Order and is hereby ADOPTED by the Court.

5. The prisoner upon receipt of the initial partial filing fee order is responsible for either direct payment of the amount assessed or executing an appropriate authorization, authorizing the custodial agency to pay the initial partial filing fee from the prisoner's inmate trust account. If the custodial agency receives authorization to pay the initial partial filing fee, the custodial agency shall immediately pay the initial fee or notify the Court that it has been authorized to pay the fee on behalf of the inmate and that the inmate's trust account has sufficient funds to pay the initial fee.
6. After payment of the initial fee, either by the prisoner or the agency having custody, the agency having custody of the prisoner shall deduct 20% of each deposit made to the prisoner's trust account and, in accordance with 28 U.S.C. §1915(b), send it to the Clerk on a regular basis until the full fee is paid or until further order. The prisoner shall execute the appropriate authorizations required by the custodial agency to authorize the necessary withdrawals from the prisoner's inmate trust account. A copy of the order to be used for collection and payment of the full filing fee appears as Appendix Two of this Miscellaneous Order and is hereby ADOPTED by the Court.
7. The United States Marshal shall serve summons on the defendant(s) only when ordered to do so by the district judge or magistrate judge. Notwithstanding the payment of any filing fee or portion thereof, the judicial officer, in his or her discretion, shall determine when or if service is appropriate.
8. If the prisoner is awarded monetary damages as a result of the lawsuit, all unpaid fees must be satisfied out of the award.
9. This Order supersedes any prior conflicting rule or order of the Court.

SO ORDERED.

DATED: February 26, 1997



JERRY BUCHMEYER, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Appendix One

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

_____, (Institution #) _____ §
V. § CIVIL ACTION NO. _____
_____ §

INITIAL PARTIAL FILING FEE ORDER

Came on for consideration plaintiff's Application for Leave to Proceed *In Forma Pauperis*. The Prison Litigation Reform Act of 1995 (PLRA) requires prisoners seeking to bring civil actions to pay an initial partial filing fee. The PLRA further requires prisoners thereafter to pay the balance of the full filing fee (\$150.00).

The Court, having considered the application in light of the PLRA, finds that the following order should be entered.

It is **ORDERED** that:

1. Plaintiff is granted leave to proceed pursuant to 28 U.S.C. § 1915.
2. Plaintiff will not be assessed an initial filing fee because he lacks the requisite funds in his prison account to pay an initial fee; however, plaintiff will be required to pay the full filing fee of \$150.00 pursuant to the PLRA.
3. An initial partial filing fee of \$_____ shall be paid to the Clerk within thirty (30) days from the date of this Order.

Plaintiff is responsible for timely payment of the initial partial filing fee. If payment will be made from plaintiff's inmate trust account, plaintiff shall execute all consents and other documents required by the agency having custody of plaintiff to authorize the necessary withdrawal from plaintiff's inmate trust account.

Failure to pay the initial partial filing fee or to show that plaintiff has insufficient assets or means by which to pay the initial partial filing fee within thirty (30) days may result in dismissal of plaintiff's complaint without further notice.

4. Service of process shall be withheld pending judicial screening pursuant to 28 U.S.C. § 1915 (e)(2).

5. No amendments or supplements to the complaint shall be filed without prior Court approval. A complete amended complaint shall be attached to any motion to amend.

6. All discovery in this case is stayed until an answer is filed or until further order.

7. No motions for appointment of counsel shall be filed until the Court has completed its screening pursuant to 28 U.S.C. § 1915 (e)(2), which may include a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), or such other proceedings deemed appropriate by the Court.

8. Plaintiff shall promptly notify the Court of any change of address by filing a written notice of change of address with the Clerk. Failure to file such notice may result in this case being dismissed for want of prosecution.

NOTICES TO PLAINTIFF:

a. If you do not wish to pay the filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute this civil action. Your notice must be mailed within thirty (30) days of the date of entry of this Order.

b. Upon receipt of the initial partial filing fee, the Court, as required by the PLRA, will order the agency having custody of plaintiff to make monthly withdrawals from plaintiff's inmate account and forward them to the Court until the balance of the full filing fee is paid. Payment of all or any part of the full filing fee will not prevent dismissal of the complaint if it is frivolous, malicious, fails to state a claim upon which relief may be granted, seeks monetary relief from a defendant who is immune from such relief, or such other reason that authorizes dismissal of the Complaint.

c. State law may require the forfeiture of good conduct time credits as a sanction for a state or federal lawsuit brought by an inmate while in the custody of the Texas Department of Criminal Justice, Institutional Division that is dismissed as frivolous or malicious. See Tex. Gov't. Code Ann. § 498.0045 (Vernon Supp. 1997).

The Clerk shall mail a copy of this Order to the inmate accounting office or other person(s) or entity with responsibility for assessing, collecting, and remitting to the Court the interim filing fee payments on behalf of inmates, as designated by the facility in which plaintiff is confined.

SIGNED and ORDERED this _____ day of _____, 19__.

Presiding Judge

Appendix Two

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

_____ DIVISION

_____, (Institution #) _____ §

V. _____ § CIVIL ACTION NO. _____

_____ §

ORDER RE: COLLECTION AND PAYMENT OF FULL FILING FEE

The Court, having considered plaintiff's Application for Leave to Proceed *In Forma Pauperis* in light of the Prison Litigation Reform Act of 1995 (PLRA), finds the following:

Plaintiff has paid the initial partial filing fee as ordered by the Court.

Plaintiff has not paid in full the initial partial filing fee but has shown good cause for failing to do so.

Plaintiff lacks the required funds in his prison account to pay an initial partial filing fee.

It is therefore **ORDERED** that:

The agency having custody of plaintiff shall, when funds exist in plaintiff's inmate trust account, forward to the Court an initial partial filing fee of \$ _____.

Plaintiff shall pay \$_____, the balance of the filing fee, in monthly installments as provided in 28 U.S.C. § 1915 (b)(2).

After payment of the initial partial filing fee, the agency having custody of plaintiff shall deduct 20% of each deposit made to plaintiff's inmate trust account and forward payments to the Court on a regular basis provided the account exceeds \$10.00.

Plaintiff shall immediately execute all consents and other documents required by the agency having custody of plaintiff to authorize the necessary withdrawals from plaintiff's inmate trust account.

NOTICE TO PLAINTIFF: If you do not wish to pay the filing fee as set forth in this order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute this civil action. Your notice must be mailed within 30 days of the date of entry of this Order.

The Clerk shall mail a copy of this Order to the inmate accounting office or other person(s) or entity with responsibility for assessing, collecting and remitting to the Court interim filing fee payments on behalf of inmates, as designated by the facility in which plaintiff is confined.

SIGNED and ORDERED this _____ day of _____, 19____.

Presiding Judge