

General Order 94-7

FEB 11 1994

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

DAVID J. MALAND, CLERK
BY DEPUTY Jina Chambliss

GENERAL ORDER CONCERNING PRISONER *IN FORMA PAUPERIS* PROCEEDINGS

The statute governing *in forma pauperis* proceedings is 28 U.S.C. § 1915. The Supreme Court, citing § 1915(d), emphasized that Congress authorized courts to dismiss a claim filed *in forma pauperis* "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." *Nietzke v. Williams*, 490 U.S. 319, 324 (1989). The Fifth Circuit has announced several rules governing *in forma pauperis* proceedings. The initial determination should be whether a plaintiff's financial status warrants the granting of an application to proceed *in forma pauperis*. *Mitchell v. Sheriff Dept., Lubbock County, Tex.*, 995 F.2d 60, 61 n.1 (5th Cir. 1993); *Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976). The district court may later dismiss the complaint under § 1915(d) if the court finds that the complaint is frivolous. *Mitchell*, 995 F.2d at 61 n.1; *See Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir. 1990). The district court may determine whether a complaint is frivolous at any time, even before service of process. *Ali*, 892 F.2d at 440; *Cay v. Estelle*, 789 F.2d 318, 324 (5th Cir. 1986).

Keeping these principles in mind, acting by consent of the judges of this Court, it is **ORDERED**, effective immediately, in accordance with 28 U.S.C. § 1915, that the following rules be adopted with respect to any cause of action submitted by a prisoner with an application to proceed *in forma pauperis*:

1. The Clerk of the Court shall file on the regular docket any cause of action submitted by a plaintiff or plaintiffs which is accompanied by an application to proceed *in forma pauperis*

and such application is signed under penalty of perjury. In the event the application to proceed *in forma pauperis* is not signed, the Clerk shall assign the cause of action a miscellaneous number and submit the case to a judicial officer for an order notifying the plaintiff(s) that the cause of action will not be filed on the regular docket until a signed application to proceed *in forma pauperis* is received by the Court.

2. When a cause of action is filed on the regular docket, the Clerk will assign the case to a district judge, who may refer the case to a magistrate judge. The referral order will instruct the magistrate judge, pursuant to 28 U.S.C. § 1915(d), to initially determine if the plaintiff(s) should be allowed to proceed *in forma pauperis* or whether a partial or full filing fee is warranted.

3. In the event the application to proceed *in forma pauperis* is granted, the magistrate judge shall proceed with the case in accordance with 28 U.S.C. § 636(b)(1), including a determination of whether the case should be dismissed as frivolous or malicious pursuant to 28 U.S.C. § 1915(d).

4. The United States Marshal shall serve summons on the defendants in an *in forma pauperis* proceeding only when so ordered by a presiding district or magistrate judge. The issuance of service is not required by the granting of *in forma pauperis* status; instead, the presiding judicial officer alone, in his or her discretion, shall determine when service is appropriate.

5. Because the determination of whether a full or partial payment of fees is appropriate is dependent upon a review of both the financial history and present economic status of each applicant, many factors must be considered by the Court in the exercise of its discretion. However, in order to establish a basis for uniform review of applications to proceed *in forma pauperis* received from prisoners, the following advisory criteria based on past and present economic status should be considered in arriving at a reasonable fee payment:

Civil actions in which the filing fee is \$120.00 (Civil rights, torts, writs of mandamus, etc.)

Applicant's Inmate Account
Balance over Last Six Months

Under \$50.00

Clerk's Fee Requirements

Full costs waived

Over \$50.00

Obtain printout or other statement of average monthly income

Applicant's Average Monthly
Income over Last Twelve Months

\$50.00-59.99

\$5.00; other costs waived until further order

\$60.00-69.99

\$10.00; "

\$70.00-79.99

\$20.00; "

\$80.00-89.99

\$30.00; "

\$90.00-99.99

\$40.00; "

\$100.00-109.99

\$50.00; "

\$110.00-119.99

\$60.00; "

\$120.00-129.99

\$70.00; "

\$130.00-139.99

\$80.00; "

\$140.00-149.99

\$90.00; "

\$150.00-159.99

\$100.00; "

\$160.00-169.99

\$110.00; "

\$170.00-179.99

\$120.00; "

\$180.00-

Full fee; nothing waived

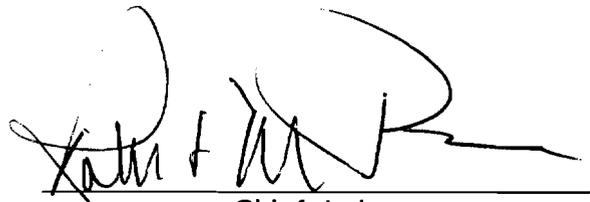
Applications for a Writ of Habeas Corpus in which the filing fee is \$5.00

<u>Applicant's Inmate Account Balance or Average Income over Last Six Months</u>	<u>Clerk's Fee Requirements</u>
Under \$50.00	Full costs waived
\$50.00-99.99	\$5.00; other costs waived until further order
\$100.00-	Full fee; nothing waived

These guidelines are intended to serve solely as a point of reference and do not preclude either consideration of the numerous other variables inherent in a § 1915(d) determination or the selection of separate standards to apply in cases where applicant's past financial history makes reliance on the normal criteria inappropriate.

Any provision herein which is in conflict with provisions contained in previous general orders supersedes the provisions contained in the previous order.

SIGNED this 11th day of February, 1994, on behalf of the Court.



Chief Judge

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

TYLER DIVISION

§
VS. § CIVIL ACTION NO.
§

ORDER

The above-entitled and numbered civil action has been submitted to the Court, along with an application to proceed *in forma pauperis*, thus pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A), it is hereby

ORDERED that the Honorable _____, United States Magistrate Judge for the Eastern District of Texas, shall be, and hereby is **DESIGNATED** to determine whether, congruent with 28 U.S.C. § 1915(d), plaintiff's financial status is such as to authorize the commencement and prosecution of this proceeding without prepayment of fees and costs or security therefor. It is further

ORDERED that, if it is adjudged that the plaintiff is authorized to proceed *in forma pauperis*, such Magistrate Judge is, in accordance with 28 U.S.C. § 636(b)(1)(A), hereby **DESIGNATED** to hear and determine any other pretrial matters pending in such proceeding, except for a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss such action. It is further

ORDERED that, in compliance with 28 U.S.C. § 636(b)(1)(B), in relation to such proceeding, the Magistrate Judge shall be, and hereby is **DESIGNATED** to conduct such hearings, including evidentiary hearings and hearings conformable to *Spears v. McCotter*, 766

F.2d 179 (5th Cir. 1985), as the Magistrate Judge may consider necessary, and thereafter to submit to the undersigned judge proposed findings of fact and recommendations for the disposition, by the undersigned judge, of any matters that are excepted in the second paragraph of this order, which may include, without limitation, a recommendation as to whether such proceeding should be dismissed for frivolousness or maliciousness under 28 U.S.C. § 1915(d). It is further

ORDERED that the Magistrate Judge shall file proposed findings and recommendations pertaining to any of the matters alluded to in the third paragraph of this order with the Clerk of Court, and that a copy be forthwith mailed to all parties, by certified mail (return receipt requested). It is finally

ORDERED that summons shall be issued only when so ordered by the Magistrate Judge, who has the discretion to determine if and when summons is appropriate. Issuance of summons is not required in the event the application to proceed *in forma pauperis* is granted.

SIGNED this _____ day of _____, 199__.

UNITED STATES DISTRICT JUDGE