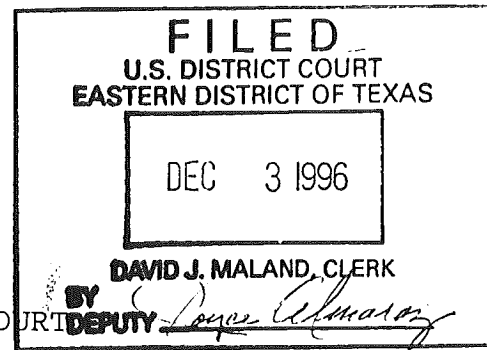


General Order No. 96-27



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

GENERAL ORDER CONCERNING PRISONER *IN FORMA PAUPERIS* PROCEEDINGS

The statute governing *in forma pauperis* proceedings is 28 U.S.C. § 1915. This statute requires that in *in forma pauperis* proceedings filed by prisoners, prisoners must pay the full amount of the filing fee; however, the lawsuit may be commenced without prepayment of the full fee.

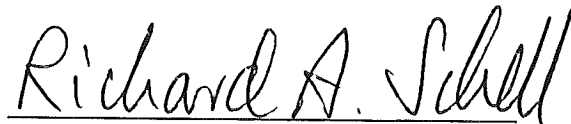
Therefore, acting by consent of the judges of this Court, it is ORDERED, effective December 1, 1996, that the following rules be adopted with respect to any complaint submitted by a prisoner with an application to proceed *in forma pauperis*:

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.
2. The *in forma pauperis* application shall contain the average monthly balance and average monthly deposits in the plaintiff's inmate trust account for the six month period immediately preceding the filing of the complaint certified by an official of the institution. If the plaintiff has been incarcerated less than six months, then the average monthly balance and average monthly deposits during the period of incarceration shall be stated.
3. 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. Existing referral orders for prisoner civil rights cases shall continue in effect and shall be construed to instruct the magistrate judge, pursuant to 28 U.S.C. § 1915, to determine if the plaintiff(s) should be allowed to proceed without prepayment of fees and to judicially screen the complaint pursuant to 28 U.S.C. § 1915A.
4. Upon the filing of a prisoner civil rights lawsuit in which *in forma pauperis* status is sought, the Court shall assess the initial partial filing fee in accordance with 28 U.S.C. § 1915(b)(1). A copy of the filing fee order to be used for

this purpose appears as Appendix One to this General Order and is hereby ADOPTED by the Court.

5. After the payment of this initial fee, the inmate accounting department shall deduct 20% of each deposit made to the plaintiff's trust account and, in accordance with 28 U.S.C. 1915, send it to the Court on a regular basis until the full fee is paid or until further order.
6. In conformity with 28 U.S.C. § 1915A, the Court shall, as soon as practicable, determine if the lawsuit is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.
7. The United States Marshal shall serve summons on the defendants in a proceeding under 28 U.S.C. § 1915 only when so ordered by a presiding district or magistrate judge. The issuance of service is not required when a plaintiff is allowed to proceed without prepayment of fees; instead, the presiding judicial officer alone, in his or her discretion, shall determine when or if service is appropriate.
8. Upon the resolution of a lawsuit proceeding under 28 U.S.C. § 1915, the presiding judicial officer may, in his or her discretion, waive any remaining fees to be paid. In the event that 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 other General Order in conflict with the provisions of this order.

SIGNED this 27th day of November, 1996, on behalf of the Court.


CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF TEXAS
_____ DIVISION

_____, TDCJ # _____ §
V. § CIVIL ACTION NO. _____
_____ §

INITIAL PARTIAL FILING FEE ORDER

Came on for consideration plaintiff's Application for Leave to Proceed *In Forma Pauperis* (Dkt# _____). The Prison Litigation Reform Act of 1996 (PLRA) requires prisoners seeking to bring civil actions to pay an initial partial filing fee. The Act further requires prisoners thereafter to pay the balance of the full filing fee (\$120.00).

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

It is **ORDERED** that:

1. The Clerk shall file plaintiff's pleadings without prepayment of the filing fee.
2. An initial partial filing fee of \$ _____ shall be paid to the Clerk within thirty (30) days from receipt of this Order.
3. 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 .
4. 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 30 days may result in a dismissal of plaintiff's complaint without further notice.

5. Service of process shall be withheld pending judicial screening pursuant to 28 U.S.C. § 1915A.

6. 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.

7. All discovery in this case is stayed until an order to answer is filed.

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

9. Plaintiff shall 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 30 days of the date of entry of this order.

b. Upon receipt of the initial partial filing fee, the Court, as required by 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, or seeks monetary relief from a defendant who is immune from such relief.

c. State law requires the forfeiture of good conduct time credits as a sanction for any state or federal lawsuit brought by an inmate while in the custody of the Texas Department of Criminal Justice, Institutional Division which is dismissed as frivolous or malicious. TEX. GOVT. CODE ANN. § 498.0045 (West 1995).

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

Presiding Judge