

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

INSTRUCTIONS FOR COMMENCING CIVIL ACTIONS
IN FORMA PAUPERIS

(includes civil rights and mandamus actions)

The following instructions have been compiled to assist any person wishing to commence, prosecute or defend any civil action or proceeding or appeal therein without the prepayment of fees in this court. We have attempted to simplify procedures; however, we cannot and will not act as lawyers nor give advice as counsel. We do not anticipate that these simple procedures will satisfy all needs, and the Local Rules of practice for the U.S. District court for the Northern District of Oklahoma are available for more specific guidance. You should use the Local Rules along with the Federal Rules of Civil Procedure in preparing your case. The Federal Rules are available at a public library.

IN FORMA PAUPERIS: In *in forma pauperis* status you are commencing an action in this court without the prepayment of fees or costs because of your inability to pay or provide security therefor. 28 U.S.C. §1915, as amended by the Prison Litigation Reform Act of 1996.

1. Action: You should obtain from the Court Clerk's office the necessary form for commencing the action you wish to bring. You may type or handwrite the form. The form should be legible and clearly stated so that it is easily understood. Clearly set out your grievance and your requested remedy.

2. Filing Fee: A \$150.00 filing fee is required for commencing any civil suit, action or proceeding. A \$105.00 filing fee is required for appeals to the Tenth Circuit Court of Appeals.

A. In forma pauperis requirements: If you are unable to prepay the required filing fee, you may seek *in forma pauperis* status. **By requesting *in forma pauperis* status you are requesting the waiver of the prepayment of fees.** You must submit an affidavit that includes a statement of all of your assets and that you are unable to pay such fees or give security therefor.

You must also file a certified copy of your trust fund or institutional account for the six-month period immediately preceding the filing of the action or appeal. **Notwithstanding the request for waiver of filing fees, a prisoner must pay the full amount of the filing fee.** The court shall recover the full amount of the filing fee. The court shall collect as initial partial payment of the fees 20% of the greater of:

- (1) the average monthly deposits in the prisoner's account; or
- (2) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint or notice of appeal.

If you fail either to pay the initial partial filing fee within 20 days or to show cause for your failure to pay, your action shall be dismissed without prejudice to refile. After collection of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20% of the preceding month's income credited to the prisoner's account. The prisoner's custodian will forward these payments to the clerk of the court each time the amount in the account exceeds \$10.00. However, it is your responsibility to ensure that timely payments are submitted to the Court Clerk. Failure to submit timely payments will result in the dismissal of your case.

B. Form: You must fully complete a Motion for Leave to Proceed In Forma Pauperis and Affidavit and attach a certified copy of your institutional account executed by the prison official in charge of managing your account.

3. Summons and Marshal Service Forms (USM 285): All prisoners filing civil actions must complete a summons and marshal form for each named defendant. The officers of the court will issue and serve all process upon your filing the summons with the court. You are responsible for the timely movement of your case once it is filed and for the proper procedure for service of process. Federal Rules of Civil Procedure Rule 4 will provide you with the necessary information for proper service depending upon the parties to be served.

4. Copies: Along with your original complaint, you must submit one copy for the Court and enough copies of the complaint to serve on each defendant you have named. All copies of the complaint must be identical to the original complaint.

5. Dismissal: The court shall dismiss your case without refunding any portion of the filing fee any time the court determines that your allegation of poverty is untrue; the action or appeal is frivolous or malicious; fails to state a claim upon which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. If your case is dismissed, not only will we not refund your filing fee, but we will also continue to collect the remaining filing fee until the entire filing fee has been paid.

You may voluntarily dismiss your action without incurring any fees or costs within 20 days after your initial filing. See Fed. R. Civ. P. 41(a).

6. Costs: The court may order you to pay all costs of the action, including the stenographic transcription of any printed record if you are unsuccessful at the conclusion of the action. This includes the summary dismissal upon the filing of your case.

7. Prior Actions: A prisoner may not bring a civil action or appeal a judgment in a civil action or appeal a judgment in a civil action *in forma pauperis* if while detained or incarcerated he has brought three or more actions which were dismissed as frivolous, malicious or which failed to state a claim upon which relief may be granted, unless the prisoner is under imminent threat of serious physical injury.