

CHANCERY COURT INTERNAL OPERATING PROCEDURES

X. IN FORMA PAUPERIS FINANCIAL ELIGIBILITY GUIDELINES

- (1) When *in forma pauperis* applicants have income and assets at or below 125% of the poverty level as published in the Code of Federal Regulations,¹ their applications shall be approved. At income or asset levels above 125% of the poverty level, the judicial officer may use her discretion in granting all or part of the application, if the applicant has unusual expenses or debts in relation to their income.
- (2) In determining the maximum allowable assets, the following shall be excluded:
 - (i) Principal residence and surrounding land;
 - (ii) Reasonable equity value in work-related equipment that is essential to employment or self-employment of an individual;
 - (iii) Motor vehicles used for transportation with equity values of up to \$10,000;
 - (iv) Household goods;
 - (v) Personal belongings with a fair market value of less than \$25,000;
 - (vi) Life insurance with a maximum cash surrender value of \$8,000;
 - (vii) Pension funds and dedicated retirement funds; and
 - (viii) Burial plots.

¹ See 45 C.F.R. Pt. 1611.

CHANCERY COURT OPERATING PROCEDURES

XI. IN FORMA PAUPERIS PROCEDURES

- (1) Applications and affidavits to proceed *in forma pauperis* from non-inmates shall be presented to the Master in Chancery assigned to review such applications. The Master may:
 - (a) Enter an order waiving all fees and court costs and directing the complaint be filed as a new case and given a number.
 - (b) Enter an order directing certain fees and court costs be paid and directing the complaint be filed as above.
 - (c) Enter an order establishing a schedule for payment of fees and court costs and directing the complaint be filed as above.
 - (d) Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment A. Such an order shall be considered a draft report to which the non-inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final, and the non-inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of this Court.

- (2) Applications and affidavits to proceed *in forma pauperis* from inmates shall be presented to the Master in Chancery assigned to review such applications. The Master may:
 - (a) Direct the amount of fees and costs to be paid and that the inmate shall pay 20 percent of the average daily balance of that inmate's account for the previous six months or since the time of incarceration, whichever period of time is less.
 - (b) Determine whether, based upon the affidavit, the inmate should be ordered to pay more than 20 percent.
 - (c) Establish a schedule for payment.
 - (d) Order that the pleading be filed as a new case and given a number, if any of the above is ordered.
 - (e) Enter an order denying the application and directing payment of fees by a specified date.

A form of such an order is Attachment B. Such an order shall be considered a draft report to which the inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the report shall be deemed final and the inmate shall be deemed to have stipulated to the approval and entry of the report as a final order of the Court. The Register in Chancery shall then forward a copy of the payment order to the institution where the inmate is housed.

- (3) After establishing the amount of fees and costs to be paid, and once the complaint has been filed and assigned an appropriate number, the Master shall review the complaint and issue such orders as authorized or required by Chapter 88 of Title 10 of the Delaware Code and such other applicable statutes (hereinafter, the “IFP Statute”).

A form of such order is Attachment C. If the Master dismisses the complaint, the order of dismissal shall be considered a draft report to which the inmate or non-inmate may file an exception under Chancery Court Rule 144. If no exception is filed in a timely manner, the order dismissing the complaint along with any written decision by the Master shall be presented to the Chancellor for review and final order.

- (4) If the Master does not dismiss the complaint upon initial review under the IFP Statute, the Master shall order that service of process issue. A form of such order is Attachment C. A form of such order in the case of a civil miscellaneous matter is Attachment D.
- (5) Any judicial officer to whom the case is assigned may subsequently dismiss the complaint and issue such other orders as are authorized or required under the IFP Statute.
- (6) The Court retains jurisdiction over the *in forma pauperis* litigant after dismissal or judgment is entered against such litigant for purposes of collecting all fees and costs.
- (7) If the application to proceed *in forma pauperis* is denied, the Register in Chancery shall notify the applicant that:
 - (a) The application has been denied.
 - (b) The amount of the filing fee due.
 - (c) The filing fee must be paid by a specified date (not less than 15 calendar days away) from the date of the notice and, if not paid by then, the matter will be considered closed.

Attachment A. Order on Application to Proceed in forma pauperis (non-inmates).

ORDER ON APPLICATION TO PROCEED

IN FORMA PAUPERIS

(Non-Inmates)

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay no fees or court costs; or

_____ Pay certain fees and court costs, namely: _____

_____ Pay such fees and court costs:

_____ By _____

\$_____ per month

The complaint/petition shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the matter will be considered closed or the filing will be rejected.

Master in Chancery

Dated:

ATTACHMENT B. Order on Application to Proceed in forma pauperis (inmates).

ORDER ON APPLICATION TO PROCEED

IN FORMA PAUPERIS

(Inmates)

The Court having considered the application to proceed *in forma pauperis* and the affidavit filed in connection therewith,

IT IS ORDERED:

_____ The application is **GRANTED**. The applicant shall:

_____ Pay twenty percent (20%) of the applicant's average daily balance in the applicant's inmate account for the previous six months or time of incarceration, whichever period of time is less.

_____ Pay _____ (Dollars or more than 20% of account).

_____ No fee or court costs to be paid.

The complaint/petition shall be filed.

_____ The application is **DENIED**. The filing fee of \$_____ is due (not less than 15 calendar days from the date of notice). If not paid by then, the matter will be considered closed or the filing will be rejected.

Master in Chancery

Dated:

ATTACHMENT C. Order upon Initial Review of Complaint.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

v.)
)
) **Civil Action No.**
)
)

ORDER UPON INITIAL REVIEW OF COMPLAINT

The Court having reviewed the complaint:

1. ___ IT IS ORDERED that the complaint is **DISMISSED** under 10 *Del. C.* § 8803(b) because:

___ The complaint was factually frivolous.

___ The complaint was legally frivolous.

___ The complaint was malicious.

___ It plainly appears from the face of the complaint that the plaintiff is not entitled to relief.

For the following reasons: _____

Service of process shall not issue.

2. ___ The complaint is **NOT DISMISSED** and service of process shall issue.

IT IS SO ORDERED.

Dated:

Master in Chancery

ATTACHMENT D. Order upon Initial Review of Petition.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

v.)
)
) **Civil Misc. No.**
)
)

ORDER UPON INITIAL REVIEW OF PETITION

The Court having reviewed the petition:

1. ___ IT IS ORDERED that the petition is **DISMISSED** under 10 *Del. C.* § 8803(b) because:

_____ The petition was factually frivolous.

_____ The petition was legally frivolous.

_____ The petition was malicious.

_____ It plainly appears from the face of the petition that the petitioner is not entitled to relief.

For the following reasons: _____

2. _____ The petition is **NOT DISMISSED**.

IT IS SO ORDERED.

Dated:

Master in Chancery