

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

HENRY duPONT RIDGELY
PRESIDENT JUDGE

**KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901**

**ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE**

NO. 2003-6

**PROCEDURES FOR HANDLING APPLICATIONS
TO PROCEED *IN FORMA PAUPERIS***

This 17th day of July, 2003, **IT IS DIRECTED** that Administrative Directive No. 97-2 and Administrative Directive 99-3 are hereby rescinded.

IT IS FURTHER DIRECTED:

1. All applications and affidavits to proceed *in forma pauperis* shall be presented to the judge assigned to the case. In the event of the unavailability of that judge, the Prothonotary shall present the affidavit and motion to the civil office judge or the next available judge in that order.

2. In the case of a non-inmate applicant, the judge to whom presented may:

(a) Enter an order waiving all fees and court costs and directing the complaint be filed.

(b) Enter an order directing certain fees and court costs be paid and directing the complaint be filed.

(c) Enter an order establishing a schedule for payment of fees and court costs and directing the complaint be filed.

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(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.

3. In the case of an applicant who is an inmate, the Court shall:

(a) Direct the amount of fees and costs to be paid and that the inmate shall pay twenty percent of the average daily balance of that inmate's account for the previous six months or 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 twenty percent.

(c) Establish a schedule for payment.

The Prothonotary shall forward a copy of the payment order to the institution where the inmate is housed.

(d) Order that the complaint be filed, 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.

4. After establishing the amount of fees and costs to be paid, the assigned judge shall review the complaint before service of process.

5. The assigned judge shall dismiss the complaint and direct no service of process shall issue if the judge finds:

(a) the complaint is factually frivolous, or

(b) malicious, or

(c) legally frivolous and that even a *pro se* plaintiff, acting with due diligence, should have found well-settled law disposing of the issue(s) raised, or

(d) it plainly appears from the face of the complaint that the

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plaintiff is not entitled to relief.

6. If the assigned judge does not dismiss the complaint upon initial review as provided in paragraph 5, the judge shall order that service of process issue. A form of such an order is Attachment C.

7. The assigned judge may subsequently dismiss the complaint for any of the three grounds specified in paragraph 5. Any such order shall specify whether the complaint was factually frivolous, malicious or legally frivolous.

8. 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.

9. If the litigant is an inmate and the Court has dismissed the action for any of the reasons stated in paragraphs 5 or 7, the Court may order the Department of Correction to forfeit the portion of the inmate's good time credits accumulated from the date the action was filed up to and including every month until the Court disposed of the action.

10. If the Court finds that the action was factually or legally frivolous or was malicious, the Court may enter an order enjoining the litigant from filing future claims without leave of the Court. If so enjoined, the litigant must submit with any future action an affidavit certifying that:

(a) the claims to be litigated have never been raised or disposed of by any court; and

(b) the facts alleged are true and correct; and

(c) the affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issue(s) raised; and

(d) the affiant has no reason to believe the claims are foreclosed by controlling law; and

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(e) the affiant understands that the affidavit is made under penalty of perjury.

11. If the application to proceed *in forma pauperis* is denied, the Prothonotary 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 action will be dismissed.

/s/ Henry duPont Ridgely
President Judge

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oc: Prothonotaries
xc: Superior Court Judges
Superior Court Commissioners
Court Administrator
Case Scheduling Offices
Law Libraries
Michael Little, DCC
Diane Ranger, SCI
Rod Johnson, MPCJF
Angelo Cauthen, MPCJF
Mackinnon Young, BWCI
File

**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 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 complaint will be dismissed.

J.

DATED: _____

**ORDER ON APPLICATION TO PROCEED
IN FORMA PAUPERIS
(Inmate)**

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 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 complaint will be dismissed.

_____ J.
DATED: _____

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY**

)
)
) C.A. No.
)
)

vs.

ORDER UPON INITIAL REVIEW OF COMPLAINT

The Court having reviewed the complaint:

1. _____ IT IS ORDERED that the complaint is **DISMISSED** 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.

J.

DATED: _____

**AFFIDAVIT IN SUPPORT OF APPLICATION TO
PROCEED *IN FORMA PAUPERIS****

I, _____, being first duly sworn, depose and say that I am the _____ in the above-captioned case; in support of my motion to proceed without paying Court fees and costs, or give security therefor, state:

My date of birth is: _____

My current address is:

Because of my financial situation, I am unable to pay the costs of this proceeding or give security therefor. In support of that statement, I supply the following information:

1. Nature of claim or defense is:

2. Presently employed?

Yes _____ No _____

3. If "Yes", state:

(a) Name and address of employer:

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.

(b) How often paid:

(c) Take home pay per pay period:

4. If “No”, state:

(a) Name and address of last employer:

(b) Date of last employment:

5. State whether you have received any income (dividends, rent, savings interest, etc.), gifts, such as stocks, bonds or cash, from any source in the last twelve months.

Yes _____ No _____

6. If “Yes”, state:

(a) Amount of income or gift, or its value:

(b) When received:

(c) From whom or what received:

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.

(d) Whether regular or one time:

7. List all property owned, whether held in your name alone or jointly with anyone else:

(a) Real estate:

(b) Personal property (stocks, bonds, bank accounts, vehicles):

(c) Name and address of and relationship to any joint owner, designating which property is jointly owned and name of joint owner:

8. If you have a spouse, state:

(a) Amount of any income received:

(b) Source

(c) Frequency income is received:

9. If a prisoner, attach Department of Correction certified statement of your inmate account. The summary of your inmate account shall contain all account

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.

activity for the 6-month period immediately preceding the filing of the complaint, or for the entire time you have been incarcerated, whichever time is less.

10. If a prisoner, provide the following requested information.

(a) At any time while incarcerated or detained at any facility, have you previously brought an action or an appeal in a federal court or in any court of this State?

(b) If the answer to (a) was yes, identify the court(s) and provide the civil action(s) or appeal number(s) for each case.

(c) If the answer to (a) above was yes, state the outcome of each action or appeal.

11. If you are a prisoner and your complaint relates to a condition of confinement, you must have fully exhausted all administrative remedies available through the institutional grievance procedure. If you have not fully exhausted your administrative remedies, do not file the complaint in this matter or the motion to proceed in forma pauperis.

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.

If this condition applies to you, state whether you have exhausted all administrative remedies.

If you have fully exhausted all administrative remedies, attach copies of all decisions in the administrative process.

12. If not listed above, state:

(a) Amount of any cash held (whether or not in a bank)

(b) Bank accounts, listing bank, account number(s) and current balance(s).

13. Itemize debts and regular monthly expenses:

14. List names and addresses of any dependents:

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.

I, _____, swear or affirm that the above-
information is true and correct and is made under penalty of perjury.

DATED: _____

I understand that if the Court directs that I pay certain fees and court costs but dismisses my complaint or claim, the Court keeps power over me until all costs and fees are paid.

SWORN TO AND SUBSCRIBED before me this _____ day of

_____, _____.

Title

* All requests for information must be supplied, if possible. Failure to supply information may result in denial of your motion to proceed *in forma pauperis*.