

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:)	Misc. No. 3:07-mc-5014-JFA
)	
PROCEDURES IN CIVIL ACTIONS FILED BY)	ORDER
PRISONER <i>PRO SE</i> LITIGANTS,)	
)	
)	
)	

This Order promulgates updated procedures in this District Court for actions filed by prisoner *pro se* litigants (prisoner(s)). Prisoners include local detainees, as well as persons convicted for violations of criminal law in state and federal courts.¹ This Court has Local Rules and operating orders that set out procedures used in prisoner actions. *See* Local Civil Rule 83; Misc. No. 3:05-mc-5010-17 (November 1, 2005); Misc. No. 3:92-mc-316 (November 2, 1992). This Order updates the procedures used in actions filed by prisoners and replaces the prior miscellaneous operating orders mentioned above. The following internal operating procedures are adopted:

I. Submissions For Filing By Prisoners

A. The Clerk of Court is prohibited by Rule 5(e) of the Federal Rules of Civil Procedure from “refus[ing] to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.” It is the practice of this Court, and the Clerk of Court is authorized, to accept pleadings presented by

¹ Both 28 U.S.C. § 1915(h) and § 1915A define “prisoner” as “any person incarcerated or detained in any facility who is accused or, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”

prisoners for filing, to assign a civil action number and to assign a Magistrate Judge for initial review of the case even though the case may not be in proper form.² The Clerk of Court shall file the documents in the Court's Case Management/Electronic Case Filing system as of the date they are received for docketing. The date of filing in a prisoner case is actually the date the prisoner delivered the pleading to prison or jail officials for mailing to the Court. *See Houston v. Lack*, 487 U.S. 266 (1988).

B. A habeas action in proper form consists of the following:

1. a pleading with the petitioner's original signature on the appropriate form or in a form substantially similar; and
2. the full filing fee or an Application to Proceed Without Prepayment of Fees and Costs (Form AO 240) requesting to proceed *in forma pauperis*.

C. A non-habeas civil action in proper form consists of the following:

1. a pleading with plaintiff's original signature on the appropriate form or in a form substantially similar;
2. the full filing fee or an Application to Proceed Without Prepayment of Fees and Costs (Form AO 240) requesting to proceed *in forma pauperis*.
The Form AO 240 must be accompanied by a Financial Certificate for all prisoners except pre-trial detainees;

² An exception to the Clerk of Court filing pleadings and assigning a civil action number exists where a filing injunction order has been issued against a named individual. Depending on the exact terms of the injunction order, and on the enjoined individual's compliance therewith, some papers submitted by the enjoined individual for filing may be returned to the enjoined individual and not filed by the Clerk of Court.

3. one summons with the names and addresses of all defendants sued or separate summonses with the name and address for each defendant sued; and
4. a separate form USM-285 for each defendant sued if the plaintiff is proceeding *in forma pauperis*.

D. If a case is not in proper form in some respect, an order issued by the assigned Magistrate Judge will direct the prisoner to submit the items needed to render the case into proper form within a reasonable time. If the prisoner timely complies with the order, the Magistrate Judge will review the case and determine if service should be authorized. If the prisoner does not comply with the order to bring the case into proper form, the case may be forwarded to the assigned District Judge or Senior District Judge for an order of dismissal without prejudice. The dismissal of a case based on failure to bring the case into proper form will not be deemed a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g).

E. This operating order does not constrain a judge from finding that documents submitted by prisoners are substantially similar to, and thus conforming to, the requirements of this Order despite not being presented on the correct form.

II. Filing Fees and *In Forma Pauperis*

A. The Clerk of Court is required by 28 U.S.C. § 1914(a) to collect a filing fee from the party initiating a civil action, including an application for a writ of habeas corpus. In certain circumstances, commencement of an action without prepayment of the filing fee is authorized by

28 U.S.C. § 1915.³ Although prepayment of the fee is not required to file a non-habeas civil action, a prisoner, however, is required by 28 U.S.C. § 1915(b)(1) to pay the full filing fee in every non-habeas civil action. To proceed beyond initial filing in this District Court, a prisoner either must pay the full filing fee or file the appropriate financial paperwork to proceed *in forma pauperis* under 28 U.S.C. § 1915.

B. In a habeas action, the appropriate financial paperwork the prisoner must provide is a completed Application to Proceed Without Prepayment of Fees and Costs (Form AO 240). This form is a request to proceed *in forma pauperis*.

C. In any non-habeas civil action, the appropriate financial paperwork the prisoner must provide is a completed Application to Proceed Without Prepayment of Fees and Costs (Form AO 240).⁴ If the prisoner has an inmate trust account, the prisoner also must provide a completed Financial Certificate.⁵ The Financial Certificate declares the prisoner's indigence, acknowledges the prisoner's understanding that the full filing fee is required to be paid, and consents to the South Carolina Department of Corrections or Federal Bureau of Prisons collecting funds from the prisoner's inmate trust account to pay the filing fee in accordance with 28 U.S.C. § 1915(b). The

³A case subject to 28 U.S.C. § 1915(g) is an exception to proceeding without prepayment of the filing fee if the prisoner is not in imminent danger of serious physical injury.

⁴ Prior procedure in this District required the filing of a Statement of Assets form rather than a Form AO 240. The Office of the Clerk of Court shall docket a Statement of Assets form received after the effective date of this Order as a motion to proceed *in forma pauperis*.

⁵ Notice is taken that most, if not all, pre-trial detainees in local jails and detention centers do not have prisoner trust accounts. The Financial Certificate form was created by this District Court for use in non-habeas civil actions filed by prisoners and is available from the Clerk of Court. The Financial Certificate form may be revised as needed, and the Clerk of Court is authorized to accept prior versions of the form for filing.

Financial Certificate provides the necessary information to determine if funds are available for an initial filing fee installment payment in accordance with 28 U.S.C. § 1915(b)(1). The Financial Certificate must be completed by an authorized official of the South Carolina Department of Corrections or Federal Bureau of Prisons.

III. Notification of Address

A prisoner must provide the Clerk of Court a current address at which mail from the Court can be received. An initial order will notify the prisoner that any change of address from the address provided at the initiation of the case must be given to the Clerk of Court in writing. A prisoner shall be warned that the case can be dismissed for failure to keep the Clerk of Court informed in writing of a current address. If a prisoner does not provide notification of a change of address and documents mailed to the prisoner return to the Court as undeliverable, the prisoner's case may be dismissed for failure to comply with an order of the Court and/or for lack of prosecution under Rule 41 of the Federal Rules of Civil Procedure.

This Order becomes effective on the date it is filed and applies to prisoner cases received after the effective date.

IT IS SO ORDERED.

FOR THE COURT:



Joseph F. Anderson, Jr.
Chief Judge

Columbia, South Carolina
September 18, 2007