

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HERMAN DOUGLAS CARTER, JR., #83346-020

PETITIONER

VERSUS

CIVIL ACTION NO. 5:09cv40-DCB-MTP
APPEAL NO. (not yet assigned)

UNITED STATES OF AMERICA, et al.

RESPONDENT(S)

ORDER

Upon consideration of the appeal to the United States Court of Appeals for the Fifth Circuit filed by the petitioner in the above entitled action, the court notes that the petitioner failed to pay the appeal fee in the amount of \$455.00 or to complete an application to proceed in forma pauperis. Accordingly, it is hereby

ORDERED:

1. That on or before July 6, 2009, the petitioner shall file a completed application for leave to proceed in forma pauperis or pay the required appeal filing fee of \$455.00. If the filing fee is paid by the petitioner or someone other than the petitioner, there must be a written explanation that the money is being submitted as payment of the appeal fee in this case (5:09cv40DCB-MTP) on behalf of the petitioner, Herman Douglas Carter, Jr., #83346-020.
2. That the Clerk shall mail the attached in forma pauperis application to the petitioner at his last known address.
3. That the petitioner file his completed application for leave to proceed in forma pauperis or pay the required appeal filing fee of \$455.00 with the Clerk, P.O. Box 23552, Jackson, Mississippi 39225-3552.

Failure to advise this court of a change of address or failure to comply with any order of this court will be deemed as a purposeful delay and contumacious act by the petitioner and may result in the dismissal of the petitioner's notice of appeal.

THIS the 12th day of June, 2009.

s/ Michael T. Parker

UNITED STATES MAGISTRATE JUDGE

Form 4 of Federal Rules of Appellate Procedure

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
_____ DIVISION

Plaintiff

v.

CIVIL ACTION NO. _____
APPEAL NO. _____

Defendant

MOTION TO PROCEED IN FORMA PAUPERIS

I, _____, declare that I am the plaintiff in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 U.S.C. § 1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint.

Signed: _____

Date: _____

INSTRUCTIONS

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

AFFIDAVIT IN SUPPORT OF MOTION

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. §1746; 18 U.S.C. §1621)

Signed: _____
Date: _____

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source:	Average monthly amount during the past 12 months	Amount expected next month
	You	You
Employment	\$ _____	\$ _____
Self-employment	\$ _____	\$ _____
Income from real property such as rental income)	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Gifts	\$ _____	\$ _____
Alimony	\$ _____	\$ _____
Child support	\$ _____	\$ _____
Retirement (such as social security pensions, annuities, insurance)	\$ _____	\$ _____
Disability (such as social security insurance payments)	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly income:	\$ _____	\$ _____

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

EMPLOYER	ADDRESS	DATES OF EMPLOYMENT	GROSS MONTHLY PAY

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

EMPLOYER	ADDRESS	DATES OF EMPLOYMENT	GROSS MONTHLY PAY

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

FINANCIAL INSTITUTION	TYPE OF ACCOUNT	AMOUNT YOU HAVE	AMOUNT YOUR SPOUSE HAS

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

HOME (VALUE)	OTHER REAL ESTATE (VALUE)	OTHER ASSETS (VALUE)

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

PERSON OWING YOU OR YOUR SPOUSE MONEY	AMOUNT OWED TO YOU	AMOUNT OWED TO YOUR SPOUSE

7. State the persons who rely on you or your spouse for support.

NAME	RELATIONSHIP	AGE

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____
Are real-estate taxes included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is property insurance included?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in Mortgage payments)	\$ _____	\$ _____
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____

Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

[] Yes [] No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? [] Yes [] No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[] Yes [] No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Signed under penalty of perjury: _____

Date: _____

-----MUST BE COMPLETED BY PLAINTIFF-----
Authorization for Release of Institutional Account Information and
Payment of the Appeal Filing Fee

I, _____, _____
(Name of Plaintiff) (Prisoner Number)
authorize the Clerk of Court to obtain, from the agency having custody of my person, information about my institutional account, including balances, deposits and withdrawals. The Clerk of Court may obtain my account information from the past six months and in the future, until the appeal filing fee is paid. I also authorize the agency having custody of my person to withdraw funds from my account and forward payments to the Clerk of Court, in accord with 28 U.S.C. Section 1915.

(Signature of Plaintiff)

(Date)

IT IS PLAINTIFF'S RESPONSIBILITY TO HAVE THE APPROPRIATE PRISON
OFFICIAL COMPLETE AND CERTIFY THE CERTIFICATE BELOW

CERTIFICATE TO BE COMPLETED BY AUTHORIZED OFFICER
(*Prisoner Accounts Only*)

I certify that the applicant named herein has the sum of \$ _____
on account to his credit at the _____ institution where he is confined.
I further certify that the applicant likewise has the following securities to his credit according to the records
of said institution:
_____.

I further certify that during the last six (6) months the
plaintiff's average monthly **balance** was \$ _____.

I further certify that during the last six (6) months the
plaintiff's average monthly **deposit** was \$ _____.

TELEPHONE NUMBER
OF OFFICER FOR VERIFICATION

DATE

AUTHORIZED OFFICER OF INSTITUTION

PRINT NAME OF AUTHORIZED OFFICER
RETURN COMPLETED FORM TO:
U. S. DISTRICT CLERK
P.O. BOX 23552
JACKSON, MS 39225