

**INFORMATION AND INSTRUCTIONS FOR FILING A
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. §§ 1746 & 1915
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA
FOR A 42 U.S.C. §1983 CIVIL RIGHTS ACTION
AND
FOR A 28 U.S.C. §2254 HABEAS CORPUS PETITION**

**YOU SHOULD FOLLOW THESE INSTRUCTIONS CAREFULLY. FAILURE TO DO
SO MAY RESULT IN YOUR COMPLAINT OR PETITION NOT BEING FILED AND
CONSIDERED BY THE COURT.**

A. General Information About The Motion For Leave to Proceed In Forma Pauperis Form:

1. The Motion for Leave to Proceed *In Forma Pauperis* Form is designed to help you present to the court the necessary information for the court to determine whether you qualify for proceeding in a case without having to prepay the filing fee. Local Special Rule (LSR) 1-1 requires the use of the Motion for Leave to Proceed *In Forma Pauperis* Form by anyone not represented by counsel, that is, if they are proceeding *pro se*. For your motion to be considered by the District Court of Nevada, it must be typewritten or legibly handwritten. All information must be clearly and concisely written in the appropriate space on the form. **NOTE: DO NOT WRITE ON THE BACK OF ANY OF THE PAGES**; any writing on the back of any page might not be considered by the court.

2. You must sign the release (at the bottom of page 3 of the form) authorizing the court to inquire into your financial status. You must also sign the declaration under penalty of perjury that the information in the motion is true and correct. Beware that any deliberate false statement of a material fact may serve as a basis for prosecution and conviction for perjury. You should review Rule 11 of the Federal Rules of Civil Procedure. Note also that Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the rule. Additionally, if a court finds that you have engaged in sanctionable conduct (such as pursuing a frivolous or malicious action), and if you are under the control of the Nevada Department of Corrections, you can be disciplined under the Prisons' Code of Penal Discipline, which can include all sanctions authorized under the Code including the loss of good time credits and punitive confinement. Therefore, you should exercise care to ensure that all the information is true, correct **and** complete.

3. If you do not meet the requirements for proceeding *in forma pauperis*, then the full filing fee must accompany the civil rights complaint (\$350.00 plus \$50.00 administrative fee unless party granted *in forma pauperis* status under U.S.C. 28 § 1915) or petition for writ of habeas corpus (\$5.00). If it is determined that you cannot afford to prepay the full filing fee, then the court may allow you to proceed

without having to pay the full fee in advance (which will be discussed more fully later in Section C.), or without paying any fee.

4. If you are currently residing in a county that is part of the unofficial Northern Division, then you should mail your completed Motion for Leave to Proceed *In Forma Pauperis* to the Reno address; if you are currently residing in a county that is part of the unofficial Southern Division, then you should mail your completed Motion for Leave to Proceed *In Forma Pauperis* to the Las Vegas address. The counties in the unofficial Southern Division are Clark, Esmeralda, Lincoln and Nye. All other counties in the State of Nevada are in the unofficial Northern Division. See LR IA 1-6 and LR IA 1-8.

When your Motion for Leave to Proceed *In Forma Pauperis* is completed, you should mail ONLY THE ORIGINAL motion with the complaint or petition for writ of habeas corpus to:

Clerk, U.S. District Court
District of Nevada
Suite #301
400 South Virginia Street
Reno, Nevada 89501

OR

Clerk, U.S. District Court
District of Nevada
333 Las Vegas Blvd. South
Las Vegas, Nevada 89101

B. Completing The Motion for Leave to Proceed In Forma Pauperis Form:

1. Space is provided for you to name the lead defendant named in the accompanying action. Unlike a civil complaint form, you do not need to name all of the defendants/respondents in the Motion for Leave to Proceed *In Forma Pauperis*.
2. Check the appropriate line indicating the proper type of action this motion is accompanying.
3. Fill-in all of the requested information about yourself on the spaces provided. You must disclose the balance (as best you know) of any type of bank, savings, or investment account(s) to which you can gain access, any real estate you may own (whether in the State of Nevada or in another state), any cars, etc.
4. You must sign and date **BOTH** the acknowledgment and the declaration under penalty of perjury that the information provided is true and correct. Note that you are authorizing the court to inquire into your financial status. Also, you are put on notice that any untruthful statements or misrepresentations could result in sanctions being imposed against you by the court, **AND** (if you are an inmate) the Nevada Department of Corrections (NDOC) could bring disciplinary charges against you possibly resulting in the loss of good time credits and/or disciplinary confinement.
5. If you are granted leave to proceed *in forma pauperis*, this only waives the requirement to **PREPAY** the filing fee and service of process costs. If you are successful in receiving **ANY**

monetary award, the court can require you to reimburse all fees and costs that were waived because you were granted leave to proceed *in forma pauperis*.

6. **If you are NOT an inmate:** Your Motion for Leave to Proceed *In Forma Pauperis* is now ready to be filed. Do not complete page four of the form. However, you should be aware that the court may require you to provide additional information about your finances; the court has the discretion to set and require you to pay a partial filing fee. Also, read the final note at the conclusion of these instructions.

IF YOU ARE AN INMATE: The form contains a fourth page (a financial certificate) to be used by inmates to better inform the court about their financial condition. You **must** attach with your application to proceed in forma pauperis: (1) a financial certificate executed by an authorized officer at the institution; and (2) a computer printout of your inmate trust account showing account activity for the six months immediately preceding your application. Your application will be denied, and the complaint or petition may be dismissed without prejudice, if you fail to include **both**: (1) a financial certificate, and (2) a statement of your inmate trust account.

C. Determination Of Filing Fee (for inmates only):

1. A properly completed financial certificate is required for the court to consider the Motion for Leave to Proceed *In Forma Pauperis*. DO NOT submit your own affidavit instead of the financial certificate. If you do, your motion and the accompanying complaint or petition for writ of habeas corpus may not be accepted and may be returned to you.

2. To obtain a financial certificate disclosing how much money you have credited to your account(s) with the institution in which you are confined, you must sign your name and write your prison number (if you have one) on the lines provided on page 4 of the form. You must also check the line indicating that the Motion for Leave to Proceed *In Forma Pauperis* will be used to file a petition for writ of habeas corpus or civil rights complaint. You should then submit that page only to the division/department that keeps the records of how much money you have in your account(s). (The name of that division/department varies depending on where you are being held, for example, "institutional services," "accounting," etc). Someone in that division/department will complete the remainder of page 4 and return it to you. If you are in the custody of the NDOC, Inmate Services will complete the form and return it to you with a print-out showing the transactions to your account for the past six months. You must attach this print-out to the Motion for Leave to Proceed *In Forma Pauperis*. You should then put the pages of the motion in proper order. Each motion for leave to proceed *in forma pauperis* must have an **ORIGINAL** financial certificate. It is then ready to be submitted to the court with the petition for writ of habeas corpus or civil rights complaint.

3. The financial certificate must be received by the Clerk's Office within 30 days of the date it was completed and signed by the authorized officer of the penal institution. Both the Motion for Leave to Proceed *In Forma Pauperis* with the completed financial certificate (and print-out of your account

transactions) **AND** the accompanying petition for writ of habeas corpus or civil rights complaint must be mailed to the clerk's office together.

4. When you receive the completed financial certificate, it will show whether you qualify for proceeding without having to pay a filing fee, whether you qualify for proceeding by paying the full filing fee in installments, or whether you must prepay the full filing fee. This determination is based on how much money is currently on deposit in your institutional account(s) and how much money you received over the past six months. The following is a line-by-line description of the information provided on the financial certificate:

(a) Line #1 shows the total amount of money to which you have access in your institutional account(s) as of the date that the financial certificate was completed. Money that is not readily accessible is not included in this total; the institution or agency confining you may have a policy which requires that a certain minimum balance be maintained, and so the amount shown on line #1 would only include an amount in excess of the required minimum. For example, the NDOC has a policy requiring a certain percentage of money received while in prison be deposited into a savings account, and an inmate may only withdraw from the savings account the amount in excess of an amount established by the Director of Prisons. Therefore, the amount shown on line #1 includes only that amount in excess of the established minimum.

(b) Line #2 shows the average monthly balance in your account for the past six (6) months.

(c) Line #3 shows the average monthly deposits for the past six months. This amount includes deposits to your account(s) from all sources of income, such as from a prison job, gifts from family or friends, etc.

(d) Line #4 shows the initial filing fee you must pay depending on whether you are filing a civil rights complaint or a petition for writ of habeas corpus. This fee is determined by applying the **greater** of the current account balance (line #1), the average monthly balance for the past six months (line #2), or the average monthly deposits for the past six months (line #3) and multiplying that amount by 20% (.20). For example: \$20.00 X 20% = \$4.00 as an initial fee.

5. The court will review your Motion for Leave to Proceed *In Forma Pauperis* and determine the amount of the filing fee you will have to pay in order to proceed with your action.

Full filing fee: If the court determines that the full filing fee must be prepaid, then it will issue an order denying your motion for leave to proceed *in forma pauperis*; your original petition for writ of habeas corpus or civil rights complaint will be retained and you will be given an opportunity to pay the full fee. The court will issue an order

setting forth the amount of the fee and allowing you 30 days from the date of the order in which to have the fee sent to the Clerk. The Clerk will send to you two copies of the order. It will be your responsibility to make the necessary arrangements to have one copy of the order attached to the check or money order (do not send cash in the mail) in the amount of the designated fee. If you are an inmate within the Nevada Department of Prisons, then you need to submit a completed "Brass Slip" to Inmate Services with a copy of the order, authorizing them to issue a check to the court for the amount of the fee. The order designating the amount of the filing fee will also order the Clerk to retain the petition for writ of habeas corpus or civil rights complaint; it will not be filed until the designated filing fee is paid in full. If the designated filing fee is not received within the time limit, then the action may be dismissed.

No filing fee: If the court determines that you should be allowed to proceed without having to prepay a filing fee at all, then the court will issue an order directing the Clerk to file the petition or complaint and, if appropriate after screening pursuant to 28 U.S.C. § 1915, issue summons to the defendant(s) named in the complaint.

SPECIAL NOTICE TO INMATES

Installment payments toward full filing fee: If you do **NOT** have the full filing fee in your account as reflected on line #1 of the financial certificate, then at the time you commence an action you will be required to pay 20% of your average monthly balance (as reflected on line #2 of the financial certificate), or the average monthly deposits to your account (as reflected on line #3 of the financial certificate), whichever is greater. Thereafter you must pay installments of 20% of the preceding month's deposits to your account in those months that your account balance exceeds \$10.00, until the filing fee is fully paid, without regard to whether your action is closed or you are released from confinement. If you are an inmate in the custody of the NDOC who has outstanding impounds (such as accrued departmental charges, restitution, child support, room & board, etc.), prison regulations ensure that the impounds do not exceed 80% of the funds you receive (whether from a prison job or money sent to you from family/friends); your spendable funds will always be at least 20% of the amount of funds received. The filing fee to commence an action will be deducted from your 20% of spendable funds. Therefore, if you are subject to the maximum impound limit of 80%, then **ALL** of the remaining 20% of funds you receive will go towards the monthly installments until the filing fee is paid in full. The authorization in the financial certificate for the NDOC to make the above described deductions regarding filing fees does not take effect until you commence an action and the court orders payment of the fee. Therefore, if you do not wish to authorize the above described deductions for filing fee, do not commence an action. You commence an action by submitting documents to the court which causes a case number to be issued. Federal law now requires collection of the full filing fee for civil rights actions commenced by an inmate.

SPECIAL NOTICE TO NON-INMATES

Partial filing fee (does not apply to habeas corpus actions): If the court determines that you should be allowed to proceed with the payment of a partial filing fee in your civil rights action, then the court will issue an order setting forth the amount of the fee and allowing you 30 days from the date of the order to have the designated fee sent to the Clerk. The Clerk will send to you two copies of the order. It will be your responsibility to make the necessary arrangements to have one copy of the order attached to the check or money order (do not send cash in the mail) in the amount of the designated fee. The order setting the amount of the filing fee will also order the Clerk to retain the civil rights complaint; it will not be filed until the designated partial filing fee is paid in full. If the designated partial filing fee is not received within the time limit, then the action may be dismissed.

6. If you believe that the information provided on the financial certificate is incorrect, or believe that because of special circumstances you should not have to pay the filing fee as reflected on the financial certificate, then you may submit **WITH** your Motion for Leave To proceed *In Forma Pauperis* a motion for waiver of filing fee. In the motion you will need to explain why you believe that the filing fee indicated on the financial certificate is not appropriate. You should be aware that only in exceptional circumstances will the filing fee designated in the court's order deviate from the amount indicated on the financial certificate. You should also be aware that your signature on the bottom of page 3 of the motion for leave to proceed *in forma pauperis* authorizes the court to investigate your financial status and authorizes any individual, corporation, or governmental entity to release to the court any financial information the court requests.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint or petition not being filed and considered by the court.

After a case number has been assigned and the court has ruled on your motion, you **MUST** write the case number on the front page of any communication you may have with the court regarding the action. The failure to include the case number may result in the document being returned to you unfiled, or at the very least the failure will delay the court's review of the document.

If you are an inmate and are paying a filing fee by having the institution send a check to the court, **DO NOT** have the money sent to the court **BEFORE** the court issues its order setting the amount of the fee. The Clerk's Office needs to have the check/money order attached to a copy of the order so that the money can be credited to the proper case. If you are an inmate within the Nevada Department of Corrections, then you need to submit a completed "Brass Slip" to Inmate Services with a copy of the order, authorizing them to issue a check to the court for the amount of the fee.