

-CITE-

28 USC Sec. 1915

02/01/2010

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART V - PROCEDURE

CHAPTER 123 - FEES AND COSTS

-HEAD-

Sec. 1915. Proceedings in forma pauperis

-STATUTE-

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate

official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of -

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay

the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

(A) the allegation of poverty is untrue; or

(B) the action or appeal -

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted;

or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of

the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, 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.

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, Sec. 98, 63 Stat. 104; Oct. 31, 1951, ch. 655, Sec. 51(b), (c), 65 Stat. 727; Pub. L. 86-320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96-82, Sec. 6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104-134, title I, Sec. 101[(a)] [title VIII, Sec. 804(a), (c)-(e)], Apr. 26, 1996, 110 Stat. 1321, 1321-73 to 1321-75; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327.)

-MISC1-

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., Secs. 9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, Secs. 1-5, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; Mar. 3, 1911, ch. 231, Sec. 5a, as added Jan. 20, 1944, ch. 3, Sec. 1, 58 Stat. 5; June 27,

1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, Sec. 1, 45 Stat. 54).

Section consolidates **a** part of section 9a(c)(e) with sections 832-836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (**a**) and (**b**).

Words "and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases," in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., Sec. 231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to **a** poor person in **a** civil case involving money only and to deny it in **a** criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for

payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 ACT

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

AMENDMENTS

1996 - Subsec. (a). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(1)], designated first paragraph as par. (1), substituted "Subject to subsection (b), any" for "Any", struck out "and costs" after "of fees", substituted "submits an affidavit that includes a statement of all assets such prisoner possesses" for "makes affidavit", substituted "such fees" for "such costs", substituted "the person" for "he" in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted "subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)" for "subsection (a) of

this section". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(2)], redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(a)(2), (c)], redesignated subsec. (e) as (f), designated existing provisions as par. (1) and substituted "proceedings" for "cases", and added par. (2).

Subsec. (g). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(d)], added subsec. (g).

Subsec. (h). Pub. L. 104-134, Sec. 101[(a)] [title VIII, Sec. 804(e)], added subsec. (h).

1979 - Subsec. (b). Pub. L. 96-82 substituted "Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if

such printing is required by the appellate court; (2) preparing **a** transcript of proceedings before **a** United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title" and "Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts" for "In any civil or criminal case the court may, upon the filing of **a** like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts".

1959 - Subsec. (**a**). Pub. L. 86-320 substituted "person" for "citizen".

1951 - Subsec. (b). Act Oct. 31, 1951, struck out "furnishing **a** stenographic transcript and" after "expense of".

Subsec. (e). Act Oct. 31, 1951, inserted provision that the United States shall not be liable for any of the costs incurred.

1949 - Subsec. (b). Act May 24, 1949, Sec. 98(**a**), inserted "such printing is" between "if" and "required".

Subsec. (e). Act May 24, 1949, Sec. 98(b), inserted "or printed

record" after "stenographic transcript".

-CHANGE-

CHANGE OF NAME

"United States magistrate judge" substituted for "United States
magistrate" in subsec. (c) pursuant to section 321 of Pub. L. 101-
650, set out as **a** note under section 631 of this title.