

**SUMMER SEMINAR
FOR THE
DISTRICT COURT ADMINISTRATORS OF GEORGIA**

BUTLER ROOM
KING AND PRINCE HOTEL
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PRISONER LITIGATION REFORM ACT OF 1996

by

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Thank you for the opportunity to speak to you on the Prisoner Litigation Reform Act of 1996. This Act was authored primarily by John Jones, a senior staff attorney with the Law Department, whose main area of responsibility is representing the Department of Corrections. Mr. Jones worked on the bill with Representative Bob Snelling, House District 99, who introduced the bill. It passed by Committee Substitute out of the House Judiciary Committee, passed both the House and Senate and was signed into law by the Governor, becoming effective on April 2, 1996. With the Prisoner Litigation Reform Act of 1996 becoming law, certain actions are required of clerks of the courts of the State of Georgia and wardens or superintendents of facilities housing inmates.

Under this Act, the clerk's office is required to notify the superintendent of the institution in which the prisoner is incarcerated that an action under the Act has been filed. This will include any civil action that is filed by an inmate prisoner who is 17 years of age or older, except a petition for writ of habeas corpus. The Act does not effect criminal appeals.

When an indigent prisoner commences any civil action under the Act, the clerk of court is required to notify the superintendent of the institution in which the prisoner is incarcerated that an action has been filed. The notice shall include the prisoner's name, inmate number, civil action number and the amount of fees or court costs due and payable. OCGA §§42-12-4(2)(A) and (B).

Upon receipt of a notice from the clerk, the warden or superintendent has certain duties under the Act which include forwarding money to the clerk to satisfy the costs. OCGA §§42-12-4(3)(A) and (B). The superintendent shall immediately freeze the inmate prisoner's account and order that all money deposited in the inmate account be forwarded to the clerk until all court costs and fees are satisfied, whereupon the freezing of the account shall be terminated.

The clerk's offices will need a list of all of the State Correctional Facilities and the wardens or superintendents for such facilities. Attached as Exhibit "A" is a warden letter which is an example of the statutory notice required from the clerk to the warden.

The Act requires specific information in the inmate prisoner's affidavit in order to proceed in forma pauperis. The failure of the prisoner to supply such information shall result in a dismissal without prejudice. While many of the dismissals addressed in the Act talk about dismissals without prejudice, under the time frames required for filing applications or notices of appeal and the constitutional requirement that the appellate courts dispose of every case within two terms, I do not believe that the Supreme Court of Georgia and the Court of Appeals of Georgia can dismiss without prejudice.

According to OCGA §42-15-5, the inmate prisoner affidavit must contain:

- (a) prisoner's identity, including any and all alias,
- (b) inmate number,
- (c) nature, amount and source of prisoner's income,
- (d) real and personal property owned by prisoner,
- (e) cash and checking accounts held by prisoner,
- (f) copy of twelve months of prisoner's inmate account records or the inmate account records for the period of incarceration, which ever is shorter.

The Act also requires the affidavit to contain the following sworn statement and signature of the prisoner:

"I, _____, do swear and affirm under penalty of law that the statements contained in this affidavit are true.

I further attest that this application for in forma pauperis status is not presented to harass or to cause unnecessary delay or needless increase in the costs of litigation."

Signature of Affiant

Notary Public Block

In addition, the inmate must serve the Court and all named defendants with a copy of the affidavit and all attachments. OCGA §42-12-5(a)(4). While the Act calls for the above specific language in the affidavit, I am not comfortable with the Court of Appeals dismissing an appeal if the affidavit is not verbatim, however, I do feel that the Act requires the affidavit contain the following:

- (1) the affidavit should state that the statements are true and correct;
- (2) the affidavit should state the application for in forma pauperis is not presented to harass;
- (3) the affidavit should state the application for in forma pauperis is not presented to cause unnecessary delay; and
- (4) the affidavit should state that the application is not presented to cause needless increase in costs of litigation.

OCGA §§42-12-5(a)(1-4).

The failure of the inmate or prisoner to comply with the requirements of an affidavit call for the dismissal without prejudice of the prisoner's actions. OCGA §42-12-5(a).

There are certain steps that the Court must take in dealing with these cases. Under OCGA §42-12-5(b)(2), in the event the court denies the prisoner's application for in forma pauperis status, the court shall give written notice to the inmate that the inmate's action will be dismissed without prejudice if the filing fees are not paid within 30 days of the date of the order.

OCGA §42-12-5(b)(3) states that should the court deny the in forma pauperis status, the court shall make a finding as to whether the in forma pauperis status was sought fraudulently, frivolously or maliciously. If the court finds that to be the case, then the action shall be dismissed with prejudice and the court shall access filing costs.

While the Court of Appeals has never dismissed an appeal under the Prisoner Litigation Reform Act of 1996 for failure to comply with the requirements of the Act insofar as it deals with the pauper's affidavit, attached as Exhibit "B", please find the Court's order in A96A2437. Griffin v. Garner, et al in which the Court discusses the requirements of the pauper's affidavit under OCGA § 42-12-1, et seq, but dismisses on other grounds.

The court is required, upon the dismissal of a prisoner action or upon the entry of judgment in favor of the responding party, to make a finding as to whether the prisoner's action was frivolous. The court may award reasonable costs and attorneys fees to the defendants or respondents if the court finds that any material allegations in the prisoner's in forma pauperis affidavit is false or, the action or any part of the action is malicious or frivolous as to findings. OCGA §9-15-14.

Under OCGA §42-12-8, appeals of actions filed by prisoners shall be as provided in Code Section 5-6-35, that is, indigent prisoner appeals must be filed as discretionary applications. Failure to do so deprives the appellate courts of jurisdiction and will result in the dismissal of the appeal. Jones v. Townsend, 267 Ga. 489 (480 SE2d 24) (1997); Serpentfoot v. Salmon et al., 225 Ga. App. 478 (483 SE2d 927) (1997). Please note that in OCGA §5-6-35, the Prisoner Litigation Act is not cross-referenced as one of those types of cases that must come up by discretionary application.

Section 42-12-9 of this Act states that the clerk of the court shall maintain a list of all prisoner actions along with the disposition of each action and the identity of the judge that handled the action. In the Court of Appeals, the identity of a particular judge to whom a case has been

assigned for purposes of drafting the opinion or order is not disclosed. I take the position that the docketing notice which lists the Division of the Court to which the case has been assigned satisfies section nine. Additionally, I take the position that the Court's docket and minutes, which are printed from our computerized docket, satisfies the list of cases which the clerk of the court is required to maintain under the Act.