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Implementation of the Prison Litigation Reform Act

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IMPLEMENTATION OF THE PRISON LITIGATION REFORM ACT

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Contrary to popular belief, federal judges are not perched on the edge of their benches waiting for Congress to pass new legislation. On April 26, 1996, the Administrative Office of the United States Courts sent a memorandum to all judges informing them of the enactment of the Prison Litigation Reform Act (hereinafter "PLRA").[2] On April 24th of the same year, Congress passed the Antiterrorism and Effective Death Penalty Act (hereinafter "AEDPA").[3] As a result of these new laws, the landscape of habeas corpus proceedings and prisoner civil rights actions in the federal courts has changed. The following is a glimpse of how the United States District Court for the Southern District of New York (hereinafter "SDNY") implemented portions of these new laws.

The amendments affecting prisoner civil rights actions primarily concern Section 1997e of the Institutionalized Persons

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[2] Pub. L. No. 104-134, 110 Stat. 1321-66. *See also* OFFICE OF CONGRESSIONAL, EXTERNAL AND PUBLIC AFFAIRS, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, OVERVIEW OF THE PRISON LITIGATION AMENDMENTS (April 29, 1996), reproduced in LOIS BLOOM, *Implementation of the Prison Litigation Reform Act*, in 16th ANNUAL SECTION 1983 CIVIL RIGHTS LITIGATION 2000, at 605, 607 (PLI Litig. and Admin. Practice Course, Handbook Series No. 640, 2000). On April 26, 1996, the President signed into law an appropriations measure, containing amendments affecting prison litigation. The amendments, entitled the Prison Litigation Reform Act, specifically concern 18 U.S.C. §§ 3624(b), 3626; 42 U.S.C. § 1997e; 28 U.S.C. §§ 1915, 1346(b); and 11 U.S.C. § 523(a). The amendments also add provisions, including new sections 1915A and 1932 to Title 28 of the United States Code. In addition, technical, conforming, and gender-related amendments were also made.

[3] Pub. L. No. 104-132, 110 Stat. 1214 (relevant provisions codified at 28 U.S.C. §§ 2244, 2253-55 (amendments to habeas corpus procedings)).

Act of 1980,[4] and the *in forma pauperis* statute, 28 U.S.C. § 1915.[5] The first gap in the statute to be noted is that the amendments do not specify an effective date.[6] When faced with a gap in a statute the Court must determine how to fill the gap, such as when the amendments should take effect. Courts frequently face new statutes with these types of gaps and it takes time to work through the little kinks in the new statutes that Congress passes.

The major role of the Pro Se Office in the SDNY is that of gatekeeper for *in forma pauperis* litigation filed by *pro se* litigants. Prior to the passage of the PLRA, the Court looked to whether the case being brought was frivolous or malicious before making a determination regarding *in forma pauperis* status.[7] The United States Supreme Court in *Neitzke v. Williams*,[8] specifically prohibited the federal courts from applying a "failure to state a

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[4] 42 U.S.C. §§ 1997-1997j (1994 & Supp. 2001).

[5] The amendments to 28 U.S.C. § 1915 (1994 & Supp. 2001), proceedings *In Forma Pauperis*, state in pertinent part:

> [I]f 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 . . . 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 preceeding the filing of the complaint or notice of appeal. (2) [Thereafter] . . . 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 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.

[6] OVERVIEW OF THE PRISON LITIGATION AMENDMENTS, *supra* note 2 at 5.

[7] Neitzke v. Williams, 490 U.S. 319 (1989) (which held that the court may dismiss an informa pauperis complaint that "lacks an arguable basis either in law or in fact." *Id.* at 325).

[8] *Id.* at 319.

claim" standard of review at the inception of a prisoner civil rights case.[9] Under the PLRA, courts are now **required** to dismiss actions brought *in forma pauperis* if it is determined that: "(a) the allegation of poverty is untrue; (b) the action or appeal is frivolous or malicious; (c) the action or appeal fails to state a claim upon which relief may be granted; or (d) the action or appeal seeks monetary relief against a defendant who is immune from such relief."[10]

The changes required by the PLRA do not end here. Although certain states had previously certified their inmate grievance procedures, the PLRA now requires prisoners to exhaust administrative remedies before filing a prisoner civil rights complaint in the federal courts.[11] In addition, filing fee provisions were adopted that require every prisoner, even though granted *in forma pauperis* status, to pay the full filing fee of $150 by installment. The filing fee requirement is irrespective of the outcome of the case.[12] The Court must calculate the partial fee to be collected from the inmate's prison account and then, if literally implementing the statute, the Court functions as a collection agent. If the prisoner does not possess sufficient funds in his prison account at the time the claim is filed, the Court must assess a partial fee according to the statute's formula, and collect monthly payments until the entire fee has been paid.

The Court first received notice of the new filing fee provision on May 5, and on May 31, 1996, the SDNY adopted a procedure which, while complying with the PLRA, relieves it of its collection agent function and provides prisoners with better

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[9] *Id.* at 329. The Court reasoned that "a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit."

[10] 28 U.S.C. § 1915(e)(2).

[11] 42 U.S.C. § 1997e(a). The new language "requires prisoners to exhaust available administrative remedies before initiating a prison condition case brought under 42 U.S.C. § 1983, or any other federal law, and eliminates the existing minimum standards for administrative grievance procedures and certification/determination process for such procedures." OVERVIEW OF THE PRISON LITIGATION AMENDMENTS, *supra* note 2 at 5.

[12] 28 U.S.C. § 1915(a)(2).

access to the Court.[13] By standing Order, the Court requires the prisoner's custodian to calculate the partial fee required by the statute and to encumber the inmate's account until the full fee has been accumulated, and then to make one payment to the Court. When this procedure was implemented, it was feared that many prisoners would write to the Court to complain about money being withheld from their accounts unjustly. However, the fear was unfounded. The State Department of Corrections was well-prepared to implement this encumbrance system. The proper computer system was already in place to collect state court restitution payments.

The SDNY also devised a prisoner authorization form, whereby prisoners authorized the facility holding them in custody to take the funds from their inmate account at the percentage specified by the statute and to disburse the funds to the SDNY.[14] Signing an authorization form enables a prisoner to file a complaint in the Court without waiting for the facility to certify the inmate's account statement.[15] The authorization form was implemented to comply with the filing fee provision.[16] Two

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[13] In the Matter of The Prison Litigation Reform Act of 1996, M10-468 (May 31, 1996), *amended*, In the Matter of The Prison Litigation Reform Act of 1996, M10-468 (Oct. 31, 1996); *See also* BLOOM, *supra* note 2, at 657.

[14] BLOOM, *supra* note 2, at 661.

[15] BLOOM, *supra* note 2, at 661. The following is the prisoners' authorization form:

> I, _____, request and authorize the agency holding me in custody to send to the Clerk of the United States District Court for the Southern District of New York, a certified copy of my prison account statement for the past six months. I further request and authorize the agency holding me in custody to calculate the amounts specified by 28 U.S.C. § 1915(b), to deduct those amounts from my prison trust fund account (or institutional equivalent), and to disburse those amounts to the United States District Court for the Southern District of New York. This authorization shall apply to any agency into whose custody I may be transferred.

[16] 28 U.S.C. § 1915(b), *supra* note 5.

weeks after the authorization form procedure was implemented in the SDNY, the procedure was affirmed in *Leonard v. Lacy*.[17]

When the PLRA was first enacted, the court believed that it could warn prisoners regarding the fee requirements without collecting the $150 fee if a complaint was being dismissed sua sponte as frivolous. The decision to allow a complaint to be filed *in forma pauperis* is usually made after determining that the claim surmounts the standard of frivolousness. According to Judge Jon O. Newman, at the time Chief Judge and writing for the Second Circuit Court of Appeals, if the prisoner whose complaint or appeal is determined to be frivolous would not have to pay the filing fee, such a construction of the PLRA filing fee requirement would produce a bizarre result; only those litigants who would overcome a frivolous standard would be obligated to pay the fee.[18] In *Leonard v. Lacy*, the Second Circuit made clear that the filing fee mandated by 28 U.S.C. § 1915(b) could not be waived by the Court.

The purpose of the PLRA is clear: to deter prisoners from filing civil rights cases in the federal courts. According to the Federal Court Management Report,[19] after remaining stable from 1985 to 1990, civil rights cases rose dramatically and steadily by 86 percent from 1991 to 1995.[20] However, a majority of these cases were employment discrimination cases. This is significant, as employment discrimination cases are not governed by the PLRA.

Even though many civil rights complaints are filed by non-prisoners, during fiscal years 1992 to 1996, prisoner

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[17] 88 F.3d at 187. The Court held that "[i]f a prisoner files an appeal without prepayment of appellate fees and does not furnish this Court with the required authorization, this Court will dismiss the appeal in 30 days unless within that time the prisoner files in this Court the required authorization."

[18] *Id.* at 184. Judge Newman stated that "there is abundant legislative history to indicate that Congress was endeavoring to reduce frivolous prisoner litigation by making all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by liability for filing fees."

[19] ELLYN L. VAIL, *Caseload Trends: Civil Rights Filings Increase*, FEDERAL COURT MANAGEMENT REPORT, (Administrative Office of the U.S. Courts, Washington, D.C.), Aug./Sept. 1996, at 3.

[20] VAIL, *supra* note 19.

petitions increased 41 percent from 48,423 to 68,235.[21] In 1995, there were 1,017 pro se prisoner civil rights cases filed in the Southern District. In 1996, the number went down to 826 cases and in 1997, 504 cases were filed. Essentially, the number of prisoner civil rights cases was cut in half by 1997 and continued to decline in 1998 to only 492. However, in 1999, the prisoner civil rights caseload in the SDNY rose to 602 new cases.[22]

In the Eastern District of New York, there were 243 cases in 1995; the number went down to 201 in 1996 and down again to 186 in 1997. In 1998, 119 prisoner civil rights cases were filed and in 1999, the number increased to 159. The Northern District of New York, which has a huge prisoner population, had 504 civil rights cases in 1995; it increased to 668 in 1996, and now prisoner civil rights filings are down to about 450 per year.[23] In the Western District of New York, prisoner civil rights filings were close to 400 in 1996 and dropped by almost half, if not more than half, by the end of 1997. Congress was successful in its aim to reduce the number of prisoner civil rights claims filed by enacting the PLRA. However, as the number of prisoner civil rights cases have decreased, the number of habeas corpus cases have increased.[24] Although the filing fee requirement contained in the PLRA does not apply to habeas corpus petitions,[25] the AEDPA, for the first time in history, set forth a one-year statute of limitations for filing a habeas corpus petition in federal court.[26]

It was an election year when Congress passed the AEDPA on April 24, 1996, and subsequently the PLRA on the 26th of April.[27] These Acts can be referred to as the proverbial "double

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[21] *Long-term Effects of Prisoner Litigation Reform Act Not Yet Clear*, THE THIRD BRANCH (Administrative Office of the U.S. Courts, Washington, D.C.), July 1997, at 5.

[22] Research on file with the author.

[23] Research on file with the author.

[24] *Long-term Effects of Prisoner Litigation Reform Act Not Yet Clear*, *supra* note 21.

[25] Reyes v. Keane, 90 F.3d 676 (2d Cir. 1996).

[26] *See* 28 U.S.C. § 2244(d)(1) (1994 & Supp. 2001). *See also* 28 U.S.C. § 2255 (1994 & Supp. 2001).

[27] BLOOM, *supra* note 2, and accompanying text.

whammy" for prisoners. As the PLRA and the AEDPA moved through Congress in 1996, the number of prisoner petitions filed, both civil rights cases and habeas corpus actions, began to increase.[28] Perhaps prisoners became aware of the proposed legislation and filed more cases in anticipation of the changes in procedures and the mandatory filing fees contained in the PLRA.[29] Prisoners have plenty of time on their hands and jailhouse lawyers are quite adept at tracking new legislation that may affect them. While prisoners may anticipate such changes in the law, federal courts are extremely busy. With hands already full, the Court must devise and adopt appropriate procedures to implement new legislation as it is enacted.

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[28] *Long-term Effects of Prisoner Litigation Reform Act Not Yet Clear*, *supra* note 21.

[29] *Long-term Effects of Prisoner Litigation Reform Act Not Yet Clear*, *supra* note 21 ("Filings peaked at about 18,000 cases during the second quarter of calendar year 1996 (April 1 through June 30, 1996).").

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