

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
W.D.N.Y. - BUFFALO

AMENDED PLAN FOR THE DISPOSITION OF *PRO SE* CASES

[Adopted and Filed October 1, 1996]

OBJECTIVE

Cases filed by *pro se* litigants comprise a sizable portion of the Court's civil caseload. The majority of these are complaints and petitions filed by inmates in state institutions. These include both civil rights complaints and habeas corpus petitions. During fiscal year 1994, *pro se* case filings amounted to nearly one-third of all civil case filings in the Western District of New York.

In recognition of the size of the *pro se* caseload, it is the purpose of this Amended Plan for the Disposition of *Pro Se* Cases ("the Plan") to establish efficient and uniform procedures for handling *pro se* cases in the Western District of New York. This Plan promotes early judicial intervention and coordinates the responsibilities of the Clerk's Office and the *Pro Se* Office to ensure orderly disposition of *pro se* cases. It is contemplated that the case management procedures set forth herein will uniformly be followed in all *pro se* cases.

Critical to this Plan's success is the implementation of standard orders intended to facilitate the management of *pro se* cases. A set of standardized forms for use in *pro se* cases shall be adopted, and amended as necessary, to facilitate implementation of the Plan. It shall be the responsibility of the *Pro Se* Office to ensure that these forms are consistently updated when warranted by case law, statute, or local rule.

COMPOSITION AND SUPERVISION OF THE *PRO SE* OFFICE

1. The *Pro Se* Office shall be staffed by three full-time employees and one part-time employee as follows: one Senior *Pro Se* Staff Attorney, one *Pro Se* Staff Attorney/Writ Clerk, and one *Pro Se* Writ Clerk based in Buffalo, New York; and one part-time *Pro Se* Staff Attorney based in Rochester, New York.

2. The *Pro Se* Office is an adjunct of the Court and, therefore, its operation and supervision shall be administered by the Chief Judge.

3. The Senior *Pro Se* Staff Attorney shall be responsible for the day-to-day management and supervision of the other attorneys and staff in the office.

I. MANAGEMENT OF *PRO SE* CASES

A. Prisoner Litigation and the Effect of the PLRA

1. The Prison Litigation Reform Act ("PLRA"), enacted on April 26, 1996, significantly affects civil actions or appeals brought by inmates in state and federal institutions. Changes include, *inter alia*, (a) a requirement that the inmate first exhaust administrative remedies; (b) a requirement that even when the inmate is granted the right to proceed *in forma pauperis*, the inmate may nevertheless be required to pay the full \$120.00 filing fee, either in a lump sum or in installments subsequent to payment of an initial partial filing fee; and (c) the imposition of a sanction where an inmate has had three previous cases which were dismissed on

grounds of frivolity, maliciousness, failure to state a claim upon which relief can be granted, or because the inmate sought monetary relief from a defendant who was immune from such a suit.

2. Accordingly, the Court has developed a Notice which shall be included in the packet of forms sent in response to an inmate's request. This Notice informs the inmate of the passage of the PLRA, and advises the inmate of the exhaustion requirement, the requirement that the filing fee must be paid for each civil action commenced by the inmate, and the sanction for exceeding the statutory number of dismissals for the above-listed causes.

3. The Court also has developed an Authorization by which the inmate may authorize the institution at which the inmate is confined to provide the Court with financial information and fees. If the inmate wishes to proceed as a poor person, the signed Authorization must be returned with the completed complaint and the inmate's *in forma pauperis* motion and supporting affidavit. If the inmate fails to provide the signed Authorization (or payment of the entire \$120.00 filing fee), the case will be dismissed without prejudice.

4. The Court has entered an Administrative Order, this date, attached hereto as Appendix A, which separately sets forth obligations of the Clerk of the Court and the federal, state or local agency having custody of the inmate. The Administrative Order directs the Clerk of the Court to transmit the inmate's signed Authorization, together with a copy of the Administrative Order, to the federal, state or local agency having custody of the inmate. The Clerk of the Court also is directed to demand in writing from such custodian that the custodian calculate and promptly remit to the Court from monies held by the custodian for the account of the inmate (a) the partial

filing fee mandated by the PLRA and the Administrative Order, together with (b) a certified copy of the statement for the past six months of the inmate's account and (c) a statement of the calculations used to determine the amount of the partial filing fee, copies of which the custodian must also furnish to the inmate. If the custodian initially remits only a partial filing fee on behalf of the inmate in accordance with 28 U.S.C. § 1915(b), as amended, the custodian also is required to remit to the Clerk any remaining unpaid fees in the manner described in the statute and the Administrative Order.

5. The Court will not consider the merits of any *pro se* complaint from an inmate unless (1) either the full \$120.00 filing fee is paid contemporaneously with the filing of the complaint, or (2) the inmate has been granted *in forma pauperis* status and has filed a duly executed Authorization, as required by this Plan, providing for installment payments of the filing fee.

B. Initial Case Screening

1. All filed *pro se* cases shall be referred to the *Pro Se* Office for initial screening. This screening includes reviewing complaints and petitions to determine whether the plaintiff or petitioner has submitted sufficient copies and whether the forms are properly and fully completed.

2. In addition, the *Pro Se* Office shall review all civil actions from inmates to determine whether the plaintiff has requested *in forma pauperis* status, and, if so, the *Pro Se* Office shall determine whether the inmate has submitted a completed motion to proceed *in forma pauperis*, together with a supporting affidavit and the Authorization by which the inmate

authorizes the institution in which the inmate is confined to provide the Court with fiscal information and the payment of fees.

3. The *Pro Se* Office shall determine whether the plaintiff/petitioner in a newly filed case has previously filed other cases, either pending or closed, and, if so, to which district judge or magistrate judge those cases were assigned. The *Pro Se* Office shall promptly provide this information to the Clerk of Court to facilitate assignment of the case to a district judge or magistrate judge following the case assignment procedure set forth below.

C. Case Assignment

1. By Order filed March 2, 1996, this Court adopted a system for assigning *pro se* inmate actions brought under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2254 and 2255. That Order is amended, as set forth in this section.

2. The Clerk of Court shall randomly assign each *pro se* case to a district judge or magistrate judge. All cases filed by a *pro se* plaintiff/petitioner shall be assigned to the same district judge or magistrate judge to whom a previously filed case by the same plaintiff/petitioner had been assigned.

3. The District's full-time magistrate judges shall be assigned *pro se* civil rights and habeas corpus cases filed by inmates in equal proportion to assignments made to the Court's active district judges. The District's senior district judges shall be assigned prisoner *pro se* cases on any basis they choose.

4. In the event that the assignment is to a magistrate judge, the parties shall be advised of the assignment and their right to consent to final disposition of the case by the magistrate judge pursuant to 28 U.S.C. § 636(c). At that time, the parties shall be provided with the requisite form for indicating their consent to proceed for all purposes before a magistrate judge pursuant to 28 U.S.C. § 636(c). Plaintiff shall return the executed forms to the Clerk of Court within 30 days and the defendant shall do so at the time of the entry of the defendant's first appearance in the case. The Clerk of the Court shall maintain the confidentiality of the parties' decisions on the issue of consent, and shall not inform any district or magistrate judge of the parties' responses unless all parties consent to such disclosure.

5. Pending such time as the parties either consent to such assignment or withhold such consent, pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), all pretrial matters in that case are deemed referred to the directly-assigned magistrate judge. These matters include, but are not limited to:

- a. Conduct of a scheduling conference and entry of a scheduling order pursuant to Fed.R.Civ.P. 16;
- b. Hearing and disposition of all non-dispositive motions or applications; supervision of discovery; and
- c. Supervision of all procedural matters involving the aforementioned or involving the preparation of the case or any matter therein for consideration by the district judge.

All motions or applications made in such cases shall be filed with the Clerk of Court and made returnable before the magistrate judge.

6. If all parties consent to proceed to disposition before the magistrate judge, the Clerk of Court shall prepare for the chief judge's signature an order of reference pursuant to 28 U.S.C. § 636(c). The Clerk of Court shall then file the parties' consent forms.

7. An appeal of any judgment entered by a magistrate judge pursuant to the consent of the parties will be to the Court of Appeals for the Second Circuit.

8. If no response is received from one or more of the parties after the initial period has passed, the *Pro Se* Office shall be responsible for making two additional efforts, at 30 day intervals, to obtain the completed consent forms from the parties. If the forms are not received after that effort has been made, the consent will be deemed to have been withheld.

9. If one or more of the parties fail to return the completed consent forms to the Clerk of Court before a dispositive order is to issue in the matter, such order shall be treated as an initial order and dealt with by the duty judge in the manner set forth below for initial orders.

10. If one or more of the parties refuse to consent to proceed to disposition by the magistrate judge, the action will be assigned to a district judge when a dispositive motion is filed or the case is ready for trial.

11. In the event an action directly assigned to a magistrate judge must be assigned to a district judge by reason of a refusal to consent, the district judge may, in his discretion, refer any matters concerning the case to that magistrate judge pursuant to 28 U.S.C. § 636(b).

12. This assignment procedure shall be interpreted and enforced so as to fully protect the voluntariness of the parties' consent and no judicial officer or court employee shall take any action that implies that the parties are not free to withhold consent without adverse substantive consequences.

D. Preparation of Initial Orders

1. Each active district judge shall serve as the duty judge on a rotating basis according to an agreed-upon schedule and shall be responsible for reviewing initial orders prepared by the *Pro Se* Office.

2. After a *pro se* case is assigned to a district judge or magistrate judge, the *Pro Se* Office shall review the file and prepare initial orders for signature by the duty judge. Initial orders shall be presented to the duty judge within thirty days of the case being filed.

3. "Initial orders" contemplate, but are not limited to: orders staying proceedings pending the plaintiff's pursuit of remedies under the New York State Department of Correctional Services Grievance Program; orders granting or denying permission to proceed *in forma pauperis*; orders directing service of the complaint on behalf of the plaintiff/petitioner; orders transferring venue of cases improperly filed in the Western District of New York; orders dismissing habeas

corpus petitions for failure to exhaust state court remedies or for abusing the writ of habeas corpus; orders dismissing § 1983 complaints by inmates for failure to exhaust available administrative remedies or orders staying § 1983 proceedings pending receipt of evidence that such remedies have been exhausted or that there are no such remedies available; orders dismissing § 1983 claims as frivolous, malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief from a defendant who is immune from such relief under 28 U.S.C. § 1915(e); orders dismissing § 1983 claims by inmates seeking damages for mental or emotional injury without a prior showing of physical injury; and orders dismissing complaints for failure to pay the full filing fee or providing a signed Authorization.

E. Case Summaries

Prior to delivering a *pro se* file to chambers, the *Pro Se* Office shall complete and attach to the file, a short, concise case summary form. The purpose of the case summary is to briefly inform the assigned district judge or magistrate judge of the principal allegations, the current case status, and whether the plaintiff/petitioner may have filed other cases with the Court. The case summary shall not be filed and is not part of the official court file. The case summary form must be updated and attached to the file each time the file is delivered to chambers by the *Pro Se* Office.

F. Requests for Appointment of Counsel

The *Pro Se* Office shall review all initial motions for appointment of counsel in *pro se* cases and shall prepare a form order for the Court's signature. If the initial motion is denied, subsequent motions for appointment of counsel shall be referred to the judge or magistrate judge assigned to the case. All requests for appointment of counsel shall be reviewed in light of the facts presented, the factors required by case law, and for a threshold showing of merit, and shall be granted or denied as deemed appropriate in the exercise of the court's discretion. Survival of a dispositive motion may be viewed as an indication that the complaint or petition has met the threshold requirements, but this fact is not the sole basis for determining whether counsel should be appointed.

G. Scheduling Orders In Civil Rights Cases Brought By Inmates

For each civil rights case brought by an inmate, the *Pro Se* Office is responsible for preparing a scheduling order for the signature of the assigned district judge or magistrate judge. The *Pro Se* Office shall review each civil rights case to ensure that a scheduling order has been issued. The *Pro Se* Office shall be responsible for tracking the dates of each scheduling order to determine whether the case has been prosecuted consistent with the scheduling order. If the plaintiff does not prosecute the case in accordance with the terms of the scheduling order, the *Pro Se* Office shall prepare a show cause order for dismissal of the complaint pursuant to Local Rule 41.2, as more fully described in Section III(K) of this Plan.

H. Habeas Corpus Cases

The *Pro Se* Office shall be responsible for preparing scheduling orders in habeas corpus actions. Such Orders shall be presented to the assigned district judge or magistrate judge for signature within seven days of the filing of the petition. The *Pro Se* Office's responsibility for habeas corpus proceedings beyond the preparation of the scheduling order is limited solely to direct assignments from the district judge and/or magistrate judge responsible for the proceeding.

I. Non-Inmate Pro Se Cases

The *Pro Se* Office shall prepare required initial form orders in, and track the progress of, *pro se* cases brought by persons other than inmates and shall not otherwise be responsible for handling these cases except as requested by the assigned district judge or magistrate judge.

J. Monitoring Pro Se Cases

1. All activity on *pro se* files shall be monitored by the *Pro Se* Office through a case management system which is kept separate from the Clerk's Office docket records and which is accessible to all members of the *Pro Se* Office. Calendar entries shall be made, *inter alia*, when a case is opened, when the *Pro Se* Office transmits a file to the assigned district judge or magistrate judge, and when an order is signed and the file is returned to the *Pro Se* Office. Such a system shall provide a mechanism for better tracking the progress of cases and location of case files.

2. The *Pro Se* Office shall utilize this case management system for tracking the progress of all events in the Court's *pro se* cases. Entries on each newly filed case shall be entered into the system as soon as it is received in the *Pro Se* Office, and updated whenever there is any activity on the file.

3. The *Pro Se* Office also shall include on the case management system a diary of all case deadlines in each pending *pro se* case. Where relevant, such as with respect to service by the U.S. Marshal, the *Pro Se* Office shall follow up to ensure that the action is taken within the required time frame. The *Pro Se* Office shall advise the assigned district judge's or magistrate judge's chambers of all approaching deadlines.

4. When an order is signed directing service by the U.S. Marshal, the *Pro Se* Office shall be responsible for transmitting the order to the U.S. Marshal and following up, if necessary, to ensure that service is effected within the proper time .

K. Dismissal for Failure to Prosecute

The *Pro Se* Office shall meet with or seek the approval of each of the district judges and magistrate judges at least quarterly to determine whether orders to show cause should issue pursuant to Local Rule of Civil Procedure 41.2. In the event that such orders to show cause are issued, it shall be the responsibility of the *Pro Se* Office to track and review any responses received from plaintiffs in those cases. The *Pro Se* Office shall make recommendations to the Court as to whether particular responses are sufficient to preclude dismissal for failure to prosecute. Dismissal orders in such cases, as well as in cases in which the plaintiff failed to

respond to a Local Rule 41.2 order to show cause, shall be prepared by the *Pro Se* Office and presented to the assigned district judge or magistrate judge for signature. If the plaintiff's response warrants continuation of the action, the *Pro Se* Office shall prepare a scheduling order for further proceedings for signature by the assigned district judge or magistrate judge. Such orders and recommendations shall be prepared within fourteen days of the response deadline set forth in the order to show cause.

II. ADDITIONAL RESPONSIBILITIES OF THE *PRO SE* OFFICE

A. Research

The *Pro Se* Office shall provide research assistance to district judges, magistrate judges, and their law clerks by preparing reports based on relevant substantive law governing *pro se* cases. These reports shall be updated quarterly and transmitted to each chambers with sufficient copies for all personnel. Additionally, the *Pro Se* Office shall be responsible for reviewing Supreme Court and Second Circuit Court of Appeals slip opinions on a bi-weekly basis. The *Pro Se* Office shall promptly advise each chambers of any slip opinions relevant to *pro se* matters.

B. Contact with *Pro Se* Litigants

The *Pro Se* Office shall serve as a liaison between the Court and *pro se* litigants with respect to matters that require specialized attention. Telephone calls and inquiries from *pro se* litigants who seek general information, such as information contained on docket sheets, shall be

handled by the Clerk's Office intake staff. Those inquiries requiring more specific information shall be referred to the *Pro Se* Office.

C. Monitoring and Enforcement of Sanctions

1. It is this Court's policy to enforce orders imposing sanctions against *pro se* litigants by this Court as well as by other federal district courts within the State of New York. The collection of this information concerning sanctions, to the extent it is available, shall be the responsibility of the *Pro Se* Office. This information shall be collected at least monthly from each of the other three districts within New York State and combined with the list of litigants sanctioned in the Western District of New York. This list shall then be provided on a monthly basis to each chambers and to all Clerk's Office intake personnel in order to provide improved enforcement of sanctions in the district.

2. In addition, the *Pro Se* Office is responsible for working together with the *Pro Se* Offices of the other three districts within New York State and the Second Circuit Court of Appeals, in order to develop a state-wide system for identifying all sanctioned *pro se* litigants and those inmates who have had cases dismissed for frivolity, maliciousness, failure to state a claim on which relief may be granted, or for seeking monetary relief from a defendant immune from such a suit, as described in 28 U.S.C. § 1915(e), as amended.

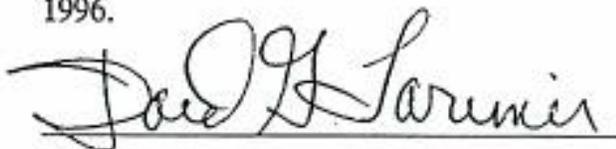
D. List of Assigned Counsel

1. The *Pro Se* Office shall develop, maintain and regularly update a list of attorneys within the district who have volunteered to accept *pro bono* assignments in civil cases. This list shall include: the attorney's name, office address and telephone number, nature of practice, number of years in practice, date of federal court admission, and area of interest for *pro bono* assignment. The list shall be transmitted to the Clerk's Offices and to each district judge's and magistrate judge's chambers quarterly.

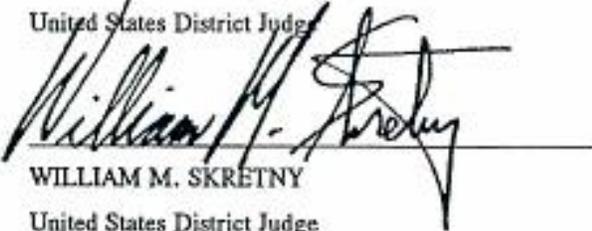
2. The *Pro Se* Office and the Clerk's Office shall take steps to promote awareness of the District Court Fund which provides reimbursement of out-of-pocket expenses incurred by attorneys who agree to represent indigent litigants on a *pro bono* basis.

V. EFFECTIVE DATE

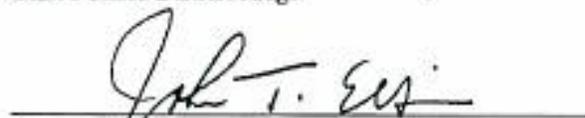
The provisions of this amended Plan shall apply to all *pro se* cases filed after April 26, 1996.



DAVID G. LARIMER, Chief
United States District Judge



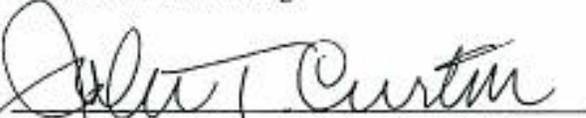
WILLIAM M. SKRETNY
United States District Judge



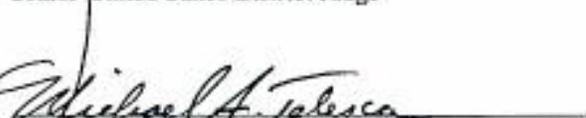
JOHN T. ELFVIN
Senior United States District Judge



RICHARD J. ARCARA
United States District Judge

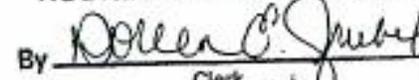


JOHN T. CURTIN
Senior United States District Judge



MICHAEL A. TELESCA
Senior United States District Judge

ATTEST: A TRUE COPY
U.S. DISTRICT COURT, WDNY
RODNEY C. EARLY, CLERK

By 
Clerk

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