

TITLE II

RULES FOR CIVIL PROCEEDINGS IN DISTRICT COURTS (EXCEPT FOR FAMILY AND DOMESTIC RELATIONS AND JUVENILE COURTS)

CHAPTER 13 CIVIL LITIGATION FILED BY INMATES

Rule 13.0 Petitions Filed by Offenders/Prisoners

A. Pro se offender/prisoner litigants in the custody of the Department of Corrections shall use the form IJR-1, "Petition for Judicial Review," available from the Department and the Clerk of Court for East Baton Rouge Parish, to apply for review of an administrative decision, excluding administrative decisions on delictual actions for injury or damages. *See* Appendix 9A. Pursuant to La. Rev. Stat. 15:1177, venue is proper only in the 19th Judicial District Court for offenders/prisoners in the custody or under the supervision of the Department of Corrections, unless the suit is based on delictual actions, in which case exclusive venue is set forth in La. Rev. Stat. 15:1184.

B. Delictual actions for injury or damages filed by offenders/prisoners, whether in the custody of the Department of Corrections or the sheriff, shall be filed in the original jurisdiction of a district court. Venue is addressed in La. Rev. Stat. 15:1184(F).

C. Referral of Matters Filed in the 19th Judicial District Court to Commissioners:

(1) Once one of the following is filed and randomly allotted to a section of court in compliance with the law, it shall be alternately referred to a commissioner for initial screening and further action in accordance with law:

(a) Administrative Appeals filed by an offender/prisoner, as defined in La. Rev. Stat. 15:1174, et seq., and La. Rev. Stat. 15:1181, et seq., against the Department of Corrections, including petitions for judicial review (appeal) of an administrative decision, including but not limited to, Prison Administrative Remedy Requests; Disciplinary Board Appeals; Lost Property Claims (that do not involve tortious conduct) Time Calculation or Good Time Complaints, even if urged as a Writ of Habeas Corpus; Duty Status Complaints, or any other complaints involving an internal prison grievance; and Parole Revocation Appeals.

(b) Ordinary civil suits by offenders/prisoners, as defined in La. Rev. Stat. 15:1181 of the Prison Litigation Reform Act, filed against the Sheriff of East Baton Rouge or any employee thereof, when based on a cause of action that arose while the plaintiff was incarcerated or in the custody of the Sheriff of East Baton Rouge or any employee thereof. Ordinary suits that require a jury trial and are allotted to a commissioner will be referred back to the allotted judge for further action/proceedings;

(c) Applications for post-conviction relief, except post-conviction relief applications involving first-degree murder convictions;

(d) Any other pleading/complaint filed by an offender/prisoner that is specifically referred in writing by a judge to a commissioner.

D. Suits Subject to La. Rev. Stat. 15:1171-1179 (Corrections Administrative Remedy Procedure Act) or La. Rev. Stat. 15:1181-1191 (Prison Litigation Reform Act):

(1) Any offender/prisoner, as defined in La. Rev. Stat. 15:1171-1179 (Corrections Administrative Remedy Procedure Act) or La. Rev. Stat. 15:1181-1191 (Prison Litigation Reform Act), shall initiate and exhaust the Administrative Remedy Procedure established by the Department of Corrections or the parish sheriff, if available, before filing an appeal or suit subject to the Corrections Administrative Remedy Procedure Act, La. Rev. Stat. 15:1171, et seq., or the Prison Litigation Reform Act, La. Rev. Stat. 15:1181, et seq., whichever is applicable.

(2) To show compliance with the law and this Rule, any suit filed by an offender/prisoner subject to La. Rev. Stat. 15:1171, et seq., or La. Rev. Stat. 15:1181, et seq., shall attach to the appeal or suit a copy of the final agency decision.

(3) The provision of this section shall not apply to:

(a) Appeals of judicial decisions;

(b) Pending criminal matters;

(c) Applications for post-conviction relief or habeas corpus applications attacking the petitioner's conviction.

E. Ordinary Proceedings Filed Pro Se by Offenders/Prisoners Pursuant to La. Rev. Stat. 15:1181, et seq. (Prison Litigation Reform Act):

(1) Exhaustion of administrative remedies, when available, is required before filing suit in the parish of proper venue. *See* La. Rev. Stat. 15:1177(C) (Corrections Administrative Remedy Procedure Act) and La. Rev. Stat. 15:1181-1191 (Prison Litigation Reform Act).

(2) When an offender/prisoner files a pro se complaint/petition that is not subject to judicial review under La. Rev. Stat. 15:1177, the inmate is required to follow the procedures and law regarding civil complaints set forth in the Louisiana Code of Civil Procedure, the Louisiana Civil Code, and any other applicable law, as well as the civil rules of the court of proper venue that are not in conflict with the Rules of this section.

(3) Any ordinary petition filed pursuant to Chapter 9 of the Louisiana Rules for District Courts shall specifically comply with La. Code Civ. Proc. arts. 851-893, set forth specific facts to support the elements of each claim pursued, and designate a physical address, not a post office box, for each party sufficient for service of pleadings.

(4) Discovery Limitations:

(a) No discovery may be filed until the court has had an opportunity to screen the petition, consider the petitioner's "strike" status, set the costs due, consider the mandatory venue, order service on the defendants, or dismiss the suit in accordance with the Prison Litigation Reform Act, La. Rev. Stat. 15:1181, et seq.

(b) All discovery requests in prisoner suits shall be filed into the court record by sending a copy to the clerk of court, in addition to sending same by mail to the opposing party or counsel thereof, and shall include a certificate of compliance with this Rule.

(c) Once the defendant has made an appearance (filing of an answer or motion), discovery in prisoner suits is governed by the Louisiana Code of Civil Procedure, the Louisiana Civil Code, the Louisiana Rules for District Courts, and other applicable Louisiana law, subject to the restrictions set forth in this section and pursuant to the Prison Litigation Reform Act, La. Rev. Stat. 15:1181, et seq.

(5) Any pre-trial motion, rule, exception, etc., including those incorporated into an answer, shall have attached to it a supporting memorandum that cites both the relevant facts and the applicable law, and which includes a declaration that a copy of same has been provided to the opposing party or his or her counsel at a specific address. The memorandum shall be served on all other parties so that it is received by the other parties at least fifteen calendar days before the hearing, unless the court sets a shorter time. Any opposition briefs shall be received in the office of the assigned judge or commissioner, as the case may be, at least eight calendar days before the date of any hearing set. No motion, rule, exception, etc., shall be assigned for hearing until the above-required memorandum, as well as the name and address of opposing counsel, have been furnished to the judge or commissioner hearing the matter.

(6) The following are limitations on trial:

In accordance with statutory law, offenders/prisoners filing In Forma Pauperis may subpoena up to six witnesses for trial, but only after a proper pre-trial order has been completed by the plaintiff and approved by the court as required hereinafter. For additional witnesses, *see* La. Code Civ. Proc. art. 5185(A)(2)(a).

(7) The following are rules on pre-trial procedures and orders:

(a) Unless otherwise provided herein or by law, no suit requiring a trial on the merits may be assigned a trial date except at pre-trial conference. Any party desiring to assign a case for trial shall, after all issues have been joined and all contemplated motions, rules, exceptions, interrogatories, requests for admissions, or other discovery proceedings have been filed, make a written request for pre-trial conference to the judge or commissioner to whom the case has been assigned.

(b) The party requesting the pre-trial conference shall certify in his or her request that all pre-trial matters have been completed and that the matter is ready for trial. If the party requesting the conference has any outstanding motions, exceptions, discovery, or other pre-trial matters, such pre-trial matters will be considered waived or withdrawn once a pre-trial conference is requested in writing.

(c) The pro se prisoner requesting a pre-trial conference shall complete and attach his or her completed portion of the Pro Se Prisoner-Plaintiff's Portion of the Pre-Trial Order, Appendix 9B hereto, to his or her request for a pre-trial conference, and certify that he or she has provided opposing counsel with a copy of the completed Pre-Trial Order at a specific address.

(8) Jury Trial Requests:

Any request for a jury trial and bond shall be made in accordance with the requirements of the Louisiana Code of Civil Procedure and Rule 12 of the Louisiana Rules for District Courts.

Adopted April 1, 2002, effective April 1, 2002; amended November 3, 2004, effective January 1, 2005; amended November 3, 2008, effective January 1, 2009.

Rule 13.1 Declaration of Inmate Counsel

If the suit was prepared or filed by or with the help or advice of inmate counsel substitute, counsel substitute's name and DOC number shall be legibly printed on the appropriate line on the face of the petition. Failure to comply with this requirement may result in delay in the service and review of the petition. If no counsel substitute was involved in the preparation or filing of the petition, the plaintiff shall print "NONE" in the blank for the inmate counsel substitute's name.

Adopted April 1, 2002, effective April 1, 2002.

Rule 13.2 In Forma Pauperis Offender/Prisoner Suits

A. La. Rev. Stat. 15:1186 governs in forma pauperis motions in actions filed pursuant to La. Rev. Stat. 15:1171, et seq. (Corrections Administrative Remedy Procedure Act) ("CARP") and La. Rev. Stat. 15:1181, et seq. (Prison Litigation Reform Act) ("PLRA").

B. In ordinary civil suits governed by the PLRA, pursuant to La. Rev. Stat. 15:1186(B)(2),

the order granting a prisoner's request to proceed in forma pauperis automatically stays all proceedings, including any service of process, until all court costs or fees due the clerk by the prisoner are paid. If the prisoner does not pay the full court costs or fees within three years from when incurred, the suit shall be considered abandoned and dismissed.

C. A prisoner may not bring a civil action, or appeal a judgment in a civil action or proceeding, in forma pauperis if the prisoner has, on three or more prior occasions while incarcerated or detained in any facility, brought an action or appeal in a state court that was dismissed on the grounds it was frivolous, malicious, failed to state a cause of action, or failed to state a claim upon which relief may be granted pursuant to La. Rev. Stat. 15:1187. If a prisoner has at least three dismissals as described in La. Rev. Stat. 15:1187 that are not yet final, and further, if the prisoner is disqualified from proceeding as a pauper either in federal court by operation of 28 U.S.C. § 1915(g) or in the courts of another state by operation of a similar law of that state, then the court on its own motion may, or on motion of a party shall, stay all proceedings in any other prisoner suit or appeal in which the prisoner is proceeding as a pauper until such time as the dismissals become final, unless the court finds that the prisoner is in imminent danger of serious physical injury.

D. Actions not governed by the CARP or the PLRA are governed by La. Code Civ. Proc. arts. 5181-5185. *See also* Louisiana Rules for District Courts, Rules 8.0-8.2.

E. Rules 8.1 and 8.2 of the Louisiana Rules for District Courts apply to suits brought by offenders/prisoners who proceed in forma pauperis.

Adopted November 3, 2008, effective January 1, 2009.

Comments

(a) Text of former Rule 13.3 of the Louisiana Rules for District Courts, titled "Civil Rules Governing In Forma Pauperis Inmate Suits," is amended and redesignated as Rule 13.2(e), effective January 1, 2009.

(b) Former Rule 13.2, titled "In Forma Pauperis Affidavits Filed by Inmates in District Courts," has been redesignated as Rule 13.3, effective January 1, 2009.

Rule 13.3 Offender/Prisoner In Forma Pauperis Applications

To proceed in forma pauperis, an offender/prisoner shall complete and file one of the following:

DISTRICT COURTS

For proceedings in district courts, including Corrections Administrative Remedy Procedure Act (La. Rev. Stat. 15:1171-1179) appeals and Parole Revocation appeals, use the form in Appendix 9C;

APPELLATE COURTS

For appeals to Louisiana Courts of Appeal, use the forms in Appendix 9D.

*Adopted April 1, 2002, effective April 1, 2002 as Rule 13.2; amended November 3, 2008, effective January 1, 2009.
Redesignated from Rule 13.2 to Rule 13.3, effective January 1, 2009.*

Comments

(a) Former Rule 13.2 of the Louisiana Rules for District Courts, titled “In Forma Pauperis Affidavits Filed by Inmates in District Courts,” was redesignated as Rule 13.3, effective January 1, 2009, and retitled “Prisoner/Offender In Forma Pauperis Applications” effective INSERT ORDER DATE.

(b) Text of former Rule 13.3 of the Louisiana Rules for District Courts, titled “Civil Rules Governing In Forma Pauperis Inmate Suits,” has been redesignated as Rule 13.2(E), effective January 1, 2009.

Rule 13.4 Parole Revocation Appeals

Parole is governed by La. Rev. Stat. 15:574.2, et seq. Venue for any action by an individual committed to the Department of Public Safety and Corrections contesting any action of the Board of Parole shall be in the Parish of East Baton Rouge pursuant to La. Rev. Stat. 15:574.11. Subject to the limitations set forth in La. Rev. Stat. 15:574.11, an offender/prisoner appealing the validity of his or her parole revocation shall use the appellate form “Appeal of Parole Revocation” in Appendix 10 and attach to his or her petition a copy of the Order of Revocation provided to him or her by the Parole Board. Service shall be requested on the Parole Board only. Within thirty days of service of the petition on the Parole Board, counsel for the Parole Board shall file a copy of the appellate record of the parole revocation maintained by the Department/Parole Board, and provide the petitioner with a copy of same. Any motions/exceptions to be heard before the merits of the appeal shall be filed within fifteen days of the filing of the appellate record. Thereafter, the matter will be set for hearing on any motions/exceptions filed and alternatively for oral argument on the appeal, upon notice by the court to the parties, unless the court orders the appeal heard on the briefs.

Adopted November 3, 2008, effective January 1, 2009.

Comment

Former Rule 13.2 of the Louisiana Rules for District Court titled “In Forma Pauperis Affidavits Filed by Inmates in District Courts,” was redesignated as Rule 13.3, effective January 1, 2009.