

**PARTIAL PAYMENT OF FILING FEES IN
IN FORMA PAUPERIS CASES: CURRENT PRACTICES
OF FEDERAL DISTRICT COURTS**

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Background and Introduction

Federal courts have statutory authority under 28 U.S.C. § 1915(a) to waive fees and costs for an indigent litigant. Federal courts have discretion under 28 U.S.C. § 1915(a) to require indigents to pay a portion of the full fee needed to file a case. This practice has been upheld against a variety of attacks.¹

Federal district courts use partial filing fees as one way of reducing the number of prisoner civil rights actions filed in its courts.² While each district that implements a procedure to assess partial filing fees has its own specific goals tailored to their local conditions, the general goals of this “innovation in administration of prisoner *in forma pauperis* petitions” are to reduce the caseload of federal courts by eliminating frivolous cases and to conserve court resources by reducing the time spent reviewing *in forma pauperis* applications.³ Thus, although some districts that have a partial filing fee procedure apply the practice to all petitioners seeking to proceed *in forma pauperis* regardless of the type of case, the overwhelming majority of cases where the court has required the petitioner to pay a partial filing fee are prisoner cases. As the attached table reflects, in the majority of the districts that have placed their practice of assessing partial filing fees in their local rules or a standing order, coverage is limited to prisoner cases with some districts further limiting coverage to actions involving civil rights, habeas corpus actions, or post conviction relief.

¹*See, e.g., In re Epps*, 888 F.2d 964 (2d Cir. 1989); *Bryan v. Johnson*, 821 F.2d 455, 457-58 (7th Cir. 1987); *In re Williamson*, 786 F.2d 1336, 1339-41 (8th Cir. 1986); *Collier v. Tatum*, 722 F.2d 653, 655 (11th Cir. 1983); *Bullock v. Suomela*, 710 F.2d 102, 103 (3d Cir. 1983); *Smith v. Martinez*, 706 F.2d 572, 574 (5th Cir. 1983); *Evans v. Croom*, 650 F.2d 521, 522-23 (4th Cir. 1981), *cert. denied*, 454 U.S. 1153 (1982).

²Recommended Procedures for Handling Prisoner Civil Rights Cases in the Federal Courts 8 (Federal Judicial Center 1980).

³Thomas E. Willging, *Partial Payment of Filing Fees in Prisoner In Forma Pauperis Cases in Federal Courts: A Preliminary Report* vii (Federal Judicial Center 1984).

In response to a request from the Judicial Conference Committee on Federal-State Jurisdiction for current information about the extent to which partial filing fees are being required in federal judicial districts, the Research Division of the Federal Judicial Center has collected the information displayed in the attached table.

The information was obtained by phone interviews with district court staff familiar with the local rules and practices of the district. Due to the dramatic increase in prisoner litigation where the petitioner is overwhelmingly indigent and proceeding without the assistance of counsel, most districts have one or more pro se law clerks who exclusively deal with prisoner petitions. These pro se law clerks were very helpful and knowledgeable about the current practice in their district. In some districts, prisoner petitions are referred to a magistrate judge. For these districts the information regarding partial filing fee procedures was obtained from either the magistrate judge or the magistrate judge's law clerk.

Description of the Attached Table

The attached table shows the current practice in each United States District Court regarding the imposition of partial filing fees.⁴ It lists the 94 districts by circuit. The third column records the results of an inquiry posed to the appropriate court personnel in each district: Does your district ever require a plaintiff petitioning to proceed *in forma pauperis* to pay a portion of the required filing fee in lieu of waving the fee completely? If the response was "no", the remaining two columns do not apply as indicated by the abbreviation "N/A" (not applicable) in the appropriate boxes. In districts that do not assess partial filing fees, the appropriate court personnel verified that an *in forma pauperis* petitioner is either granted permission to proceed with a waiver of all costs and fees or required to pay the full filing fee.

For districts that do require partial payment of filing fees, the table distinguishes districts that have a local rule or standing order addressing their practice from districts that have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules. Thus, if the response to the inquiry in the third column is "yes", then the

⁴The information in the table is current as of October 1, 1994.

reader should look to the fourth or fifth column for a description of either the local rule or standing order (fourth column) or the district's informal policy (fifth column). The description of the local rule or standing order in the fourth column is a paraphrasing of the actual language contained in the rule or order, and should not be quoted or cited as legal authority. The "Comments" column indicates whether a copy of the rule or order was obtained. The rule or order should be referred to for a more detailed description of the district's practice.

If a district does have a local rule or standing order governing the district's procedure for assessing partial filing fees, then a "no" will be placed in the fifth column indicating that the district's practice is not informal. This either/or structure assumes that all judges within a district with a local rule or standing order follows the guidelines set out in the rule or order. It does not take into account the possibility that certain judges within a district that has a local rule or standing order may follow an informal policy in addition to or different in some way from the scheme for assessing partial filing fees embodied in the rule or order.

Summary of Information in Table Regarding United States District Courts that Require Partial Payment of Filing Fees

Method of Assessing Partial Filing Fees	Number of Districts	Percent of All Federal District Courts	Percent of the 40 Districts that Require Partial Filing Fees	Name of District
Local Rules	10	11%	25%	M.D. Fla., C.D. Ill., N.D. Ind., W.D. Mich., W.D. Mo., D. Neb., D. Nev., N.D. N.Y., E.D. Tenn., E.D. Va.
Standing Orders	7	7%	17%	M.D. Ala., E.D. La., M.D. La., E.D. N.C., S.D. Ohio, E.D. Tex., S.D. Tex.
Informal Policy	23	24%	58%	N.D. Ala., S.D. Ala., N.D. Cal., D. Idaho, N.D. Ill., S.D. Ind., E.D. Ky., W.D. Ky., W.D. La., S.D. Miss., D. Mont., M.D. Ga., N.D. Ga., S.D. Ga., M.D. Pa., M.D. N.C., W.D. N.C., D. R.I., D. Utah, W.D. Va., N.D. W.Va., S.D. W.Va., E.D. Wis.

40 42%

Discussion of the Information Portrayed by the Table

Forty districts or 42% of federal district courts require partial filing fees in some form. In addition, as indicated in the "Comments" column, six districts are currently considering implementing a partial filing fee system or reinstating revised versions of prior local rules governing partial filing fees that had been rescinded.⁵

⁵See "Comments" column for D. S.C., W.D. Tenn., N.D. Iowa, D. Alaska, E.D. Wash., W.D. Okla.

Seventeen districts or 18% of federal district courts (42% of the 40 districts that require partial filing fees) have a local rule or order that establishes a procedure for assessing partial filing fees. These local rules and orders differ both by the formula by which the fee is calculated and the scope of application. For example, the local rule in the Northern District of New York requires payment of 10% of the average monthly deposits to prisoner's account for the three months prior to filing of complaint.⁶ The Eastern District of North Carolina computes payment based on up to 15% of the income prisoner received for the prior six months and "such other factors as plaintiff may draw to the court's attention."⁷ And the local rule in the Western District of Michigan allows a magistrate judge to require a reduced fee equal to the greater of (i) 20 % of the plaintiff's liquid assets, or (ii) 5% of total deposits in prisoner's account for prior six months.⁸ A few districts, including the Middle District of Louisiana, use a "sliding scale" to determine the appropriate partial fee. The scale ranges from \$0 to \$120 and is applied to the petitioner's present assets. The \$120 full filing fee is required if the petitioner has assets in excess of \$450.⁹ Districts with these sliding scales stress that they are guidelines only and do not preclude consideration of other variables inherent in a § 1915(d) determination.

The rules and orders also differ as to their scope of application. For example, the Northern District of New York and the Eastern District of Virginia apply their rules to all habeas corpus actions and all civil rights actions. As another example, the Western District of Michigan and the Northern District of Indiana apply their rules, and the Middle District of Louisiana applies its sliding scale formula, to all applications to proceed *in forma pauperis* regardless of the nature of the case, while the Central District of Illinois applies its local rule only to cases brought by incarcerated pro se plaintiffs under section 1983.

Twenty-three Districts or 24% of federal district courts (58% of the 40 districts that require partial filing fees) do assess partial filing fees as a

⁶United States District Court for the Northern District of New York, Local Rule 5.4 Civil Actions Filed in Forma Pauperis (July 1, 1994).

⁷Order Setting the Procedure for Handling of Section 1983 Cases by State Prisoners (E.D.N.C.) (April 30, 1980).

⁸United States District Court for Western District of Michigan, Local Rule 7 Administration of Special Proceedings (Aug. 1, 1991).

⁹United States District Court for the Middle District of Louisiana, General Order No. 93-3 (Nov. 2, 1993).

matter of informal policy. In almost all of these districts the appropriate court personnel (usually magistrate judges or their clerks) stressed that partial filing fees were assessed on an ad hoc basis in *in forma pauperis* petitions with the amount required left totally to the judge's discretion after a review of the petitioners financial affidavit. In some districts (for example, the Southern District of Alabama, and the Western District of North Carolina), there are flexible guidelines or rules of thumb which may or may not be adhered to by all judges within the district.

Despite these differences, the districts' local rules and orders are fairly similar in how they affect the administrative proceeding of *in forma pauperis* cases. The determination of whether a partial filing fee must be paid is made by court personnel after the petitioner files his or her petition to proceed *in forma pauperis*, and the fee must be paid before the case can proceed further. Some districts, such as the Eastern District of Missouri, have abandoned the practice of assessing partial filing fees because of the outlay in court resources taken up by computing and collecting the fee. The District of Nevada has taken a unique approach by informing the prisoner whether they will have to pay a partial fee and the amount *before* they can proceed with their civil rights complaint.¹⁰ This is accomplished by requiring prisoners to submit a completed financial certificate with their motion for leave to proceed *in forma pauperis*. An authorized officer of the penal institution wherein the prisoner is held completes the financial certificate before returning it to the prisoner by determining the required filing fee from the fee chart set forth in the financial certificate. The required filing fee is based on the greater of either 1) the prisoner's current account balance; or 2) the prisoner's average monthly net deposits for the preceding six-month period. This eliminates the need for court personnel to determine whether a partial filing fee should be assessed, computing the amount of the partial filing fee, and collecting the fee.

Some districts have decided not to continue assessing partial filing fees or to rescind their previous rules in response to appellate court decisions that have held that a district court may not sua sponte dismiss an action as frivolous under §1915(d) after the plaintiff has paid a partial

¹⁰See Plan for the Implementation of a Partial Filing Schedule for Civil Rights Complaints Filed Pursuant to 42 U.S.C. §1983 (D. Nev.) (July 1, 1992).

filing fee.¹¹ The rationale these courts have followed is that the dismissal of an action as frivolous after the plaintiff has paid a portion of the filing fee is inconsistent with Federal Rule of Civil Procedure 4(a) which requires summons to issue once a complaint is filed (a complaint is considered filed as soon as plaintiff pays a filing fee), and Federal Rule of Civil Procedure 15(a) which requires that plaintiff be given an opportunity to amend a complaint before the court dismisses the action *sua sponte*.¹² Districts adopting this rationale have decided that the benefits of a § 1915(d) frivolity dismissal outweigh the benefits from a partial filing fee system. The District of Nevada is also experimenting with new practices to preserve the ability to dismiss frivolous petitions under § 1915(d). The Research Division will explore further the approach taken by the District of Nevada and make the findings available to all districts at a later date.

The information in this study is intended to help districts considering instituting a partial filing fee system. Although this inquiry was not aimed at discovering how effective partial filing fees were in the districts utilizing the practice, conversations with court personnel in some of these districts did uncover some dissatisfaction with partial filing fee schemes in achieving their goals. The biggest complaint was that partial filing fees were “more trouble than they were worth.” In order for partial filing fees to be an effective tool for reducing meritless prisoner civil rights complaints, districts need to find the scheme that eliminates the administrative burdens and imposes a fee that serves as a disincentive to filing meritless complaints. Districts may want to find out why particular schemes are not working and how other districts have found a way to achieve better results.

¹¹*Butler v. Leen*, 4 F.3d 772 (9th Cir. 1993); *Clark v. Ocean Brand Tuna*, 974 F.2d 48, 50(6th Cir. 1992); *Grissom v. Scott*, 934 F.2d 656, 657(5th Cir. 1991); *Herrick v. Collins*, 914 F.2d 228, 230(11th Cir. 1990); *In re Funkhouser*, 873 F.2d 1076, 1077 (8th Cir. 1989); *Bryan v. Johnson*, 821 F.2d 455, 458 (7th Cir. 1987).

¹²*See, e.g., Clark*, 974 F.2d at 50.

**PARTIAL PAYMENT OF FILING FEES IN *IN FORMA PAUPERIS*
CASES IN FEDERAL COURTS¹**

FEDERAL JUDICIAL CENTER

OCTOBER 7, 1994

Marie Cordisco

Circuit	District	Does the District ever require partial payment of filing fees?	Does the District have a local rule or standing order governing the imposition of partial filing fees? (If yes, describe) ²	Does the District have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules? (If yes, describe) ³	Comments
00DC	D. D.C.	no	N/A	N/A	
01	D. Mass.	no	N/A	N/A	
01	D. Me.	no	N/A	N/A	
01	D. N.H.	no	N/A	N/A	
01	D. P.R.	no	N/A	N/A	
01	D. R.I.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
02	D. Conn.	no	N/A	N/A	
02	E.D. N.Y.	no	N/A	N/A	
02	N.D. N.Y.	yes	Local Rule 5.4: when a federal, state, or local prisoner files a civil rights complaint or a petition for writ of habeas corpus, and requests leave to proceed <i>in forma pauperis</i> , a partial filing fee is required equal to 10% of average monthly deposits to prisoner's account for 3 months prior to filing of complaint. Fee shall never exceed that set by Judicial Conference of U.S. Adopted by NY Order 94-25 enacted July 1, 1994.	no	Copy of local rule obtained.
02	S.D. N.Y.	no	N/A	N/A	
02	W.D. N.Y.	no	N/A	N/A	Order of the W.D. N.Y. filed on October 6, 1989 requiring payment of a partial filing fee by state and local prisoners seeking to proceed <i>in forma pauperis</i> in civil rights and habeas corpus actions was withdrawn and canceled by an Order filed on May 7, 1993.
02	D. Vt.	no	N/A	N/A	
03	D. Del.	no	N/A	N/A	
03	D. N.J.	no	N/A	N/A	
03	E.D. Pa.	no	N/A	N/A	
03	M.D. Pa.	yes	no	Partial filing fees may be imposed in <i>in forma pauperis</i> proceedings in civil rights and habeas corpus cases in accordance with general policy set out in <i>Jones v. Zimmerman</i> , 752 F.2d 76 (3d Cir. 1985) (partial filing fees may be assessed as long as they never exceed 10% of prisoners current institutional account at time of filing); done on an ad hoc basis and not done very frequently.	
03	W.D. Pa.	no	N/A	N/A	
03	D. V.I.	no	N/A	N/A	
04	D. Md.	no	N/A	N/A	
04	E.D. N.C	yes	Order Adopted Jan. 19, 1980 and amended by Order Adopted April 30, 1980 & July 21, 1981: in cases brought by state prisoners under §1983, prisoner will be allowed to proceed <i>in forma pauperis</i> conditioned upon payment of a partial filing fee based on the income received within the 6 month period preceding filing of complaint, and such other factors as applicant may draw to court's attention. The partial filing fee shall never exceed 15% of the income prisoner received within the preceding 6 months. Order Adopted May 27, 1980: order of April 30, 1980 imposing a partial filing fee shall also apply to federal prisoners challenging their conditions of confinement.	no	Copy of orders obtained.

¹The information in this table has been obtained from and/or verified by district court clerks or other court staff.

²The description of the local rule or standing order in this column is a paraphrasing of the actual language contained in the rule or order, and should not be quoted or cited as legal authority.

³Note that a "no" in this column assumes that all judges within a district with a local rule or standing order governing the imposition of partial filing fees follows this rule or order. It does not take into account the possibility that certain judges within a district that has a local rule or standing order may follow an informal policy in addition to or different in some way from the scheme for assessing partial filing fees embodied in the rule or order.

Circuit	District	Does the District ever require partial payment of filing fees?	Does the District have a local rule or standing order governing the imposition of partial filing fees? (If yes, describe)	Does the District have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules? (If yes, describe)	Comments
04	M.D. N.C.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , the magistrate judge may require petitioner to pay a partial filing fee; this has mostly been done in prisoner petitions for cases brought under § 1983--the magistrate judge will look at the average balance in prisoners trust fund over the past 6 months and assess a fee. Done on an ad hoc basis with no guidelines followed.	
04	W.D. N.C.	yes	no	A partial filing fee may be assessed on an ad hoc basis under magistrate judges discretion. Although there are no hard and fast rules, the rule of thumb in prisoner §1983 cases is to assess a partial filing fee of 15% of the average balance in prisoners account over preceding 6 months; in social security cases, a partial filing fee may only be assessed if each family member has more than \$600 in his account.	
04	D. S.C.	no	N/A	N/A	Local Rule 22.02(c)-(f) which contained D.S.C.'s partial fee plan for prisoners in civil actions was suspended by an Order filed on October 19, 1992 because the administrative outlay involved in computing the fee and collecting the fee outweighed any intended benefits. A new rule imposing partial fees will be reenacted in early 1995 after a district wide study of current plans is undertaken.
04	E.D. Va.	yes	Local Rule 28: in reviewing petitions to proceed <i>in forma pauperis</i> either under 42 USC §1983 or a petition for writ of habeas corpus, court may condition such action upon payment of not in excess of 20% of the aggregate deposits in a prisoners account during a 6 month period, including deposit on account at commencement of the 6 month period; if party desiring to file any proceeding <i>in forma pauperis</i> is not confined to a state or federal prison, court may require filing of an affidavit outlining party's financial ability to pay so it can determine whether party should pay all or any part of required filing fee. Adopted Fed. 15, 1989; amended March 1, 1991.	no	Copy of local rules obtained.
04	W.D. Va.	yes	no	Court may impose a partial filing fee in accordance with <i>Evans v. Croom</i> , 650 F.2d 521 (4th Cir. 1981), <i>cert. denied</i> , 454 U.S. 1153 (1982) in 28 USC § 1983 cases brought by prisoner petitioners; when petitioning for <i>in forma pauperis</i> status court may assess partial filing fee of 15% of petitioners average monthly income 6 months prior to date of filing action.	
04	N.D. W.Va.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
04	S.D. W.Va.	yes	no	In all cases brought by prisoner petitioners under 28 USC §§ 1983, 2254, 2255, a magistrate judge may assess a partial filing fee of 15% of the average balance in prisoners account 6 months prior to filing petition to proceed <i>in forma pauperis</i> . Done on an ad hoc basis under magistrate judges discretion.	
05	E.D. La.	yes	General Order No. 87-2: in petitions to proceed <i>in forma pauperis</i> under § 1983, partial costs are to be determined considering advisory criteria based on present economic status; table lists minimum and maximum clerk's fees which can be imposed when prisoner's present assets fall between \$20 increments, with \$365 being level at which prisoner must pay full filing fee. These are guidelines only and do not preclude consideration of other variables inherent in a §1915 determination, including the total deposits in prisoner's account for the 3 months preceding the filing of the complaint.. Adopted July 27, 1987.	no	Copy of order obtained.
05	M.D. La.	yes	General Order No. 93-3: in petitions to proceed <i>in forma pauperis</i> , partial filing costs are to be determined using advisory criteria based on prisoners present economic status; table lists minimum and maximum filing fees which can be imposed when prisoner's present assets fall between \$40 increments, with \$450 being level at which prisoner must pay full filing fee; these are guidelines only and do not preclude consideration of other variables inherent in a §1915(d) determination. Adopted Nov. 2, 1993.	no	Copy of order obtained.

Circuit	District	Does the District ever require partial payment of filing fees?	Does the District have a local rule or standing order governing the imposition of partial filing fees? (If yes, describe)	Does the District have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules? (If yes, describe)	Comments
05	W.D. La.	yes	no	Partial filing fees may be assessed in prisoner §1983 cases where the inmate seeks to proceed <i>in forma pauperis</i> . Although W.D. La. does not have a local rule or standing order dealing with partial payment of fees, the court has unpublished guidelines that consist of a fee scale used as a point of reference in determining the partial filing fee; the fee scale does not preclude consideration of other variables inherent in a §1915(d) determination, including total deposits in prisoner's account for 3 months preceding filing of complaint.	Copy of unpublished guidelines obtained.
05	N.D. Miss.	no	N/A	N/A	
05	S.D. Miss.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
05	E.D. Tex.	yes	General Order 94-7: in deciding whether a full or partial payment of fees is appropriate in any cause of action submitted by a prisoner with an application to proceed <i>in forma pauperis</i> , this order sets out advisory criteria based on past and present economic status which should serve merely as a point of reference in arriving at a reasonable fee payment. The table establishes guidelines: for civil actions, if inmate's account balance is between \$50 and \$180, inmate will pay a graduated portion of filing fee; in applications for writ of habeas corpus, if inmates account balance over last 6 months is between \$50 and \$100, inmate should pay \$5. Adopted February 11, 1994.	no	Copy of order obtained.
05	N.D. Tex.	no	N/A	N/A	
05	S.D. Tex.	yes	General Order No. 88-20 In the Matter of Applications to Proceed in forma Pauperis: for all petitions to proceed in forma pauperis, partial filing costs are to be determined using advisory criteria based on prisoners present economic status; table lists minimum and maximum filing fees which can be imposed when prisoner's present assets fall between \$20 increments, with \$450 being level at which prisoner must pay full filing fee; these are guidelines only and do not preclude consideration of other variables inherent in a §1915(d) determination. Adopted on Nov. 14, 1988:	no	Although the S.D. Tex.'s general order is still in effect, as a result of <u>Grissom v. Scott</u> , 934 F.2d 656 (5th Cir. 1991) the S.D. Tex. has decided not to assess partial filing fees on prisoner pro se petitioners seeking to proceed in forma pauperis because the usefulness of a dismissal for frivolity under §1915(d) outweighed the usefulness of the partial filing fee provisions. However, the general order may still be turned to for guidance in assessing a partial filing fee for non-prisoner pro se petitioners even though this is done rarely.
05	W.D. Tex.	no	N/A	N/A	W.D. Tex. almost never imposes a partial filing fee on prisoner pro se petitioners seeking to proceed <i>in forma pauperis</i> due to <u>Grissom v. Scott</u> , 934 F.2d 656 (5th Cir. 1991) because the court does not want to lose its ability to dismiss <i>in forma pauperis</i> cases as frivolous under § 1915(d). In past four years, W.D. Tex. imposed a partial filing fee in 3 cases, and all involved a petitioner not incarcerated, had income, but couldn't meet the full filing fee.
06	E.D. Ky.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
06	W.D. Ky.	yes	no	In prisoner cases where petitioner seeks to proceed <i>in forma pauperis</i> , judge may impose a partial filing fee; this is done very rarely at this time; as a very loose guideline the amount of the partial fee will be approximately 10% of prisoners average monthly income based upon the 6 months preceding the filing date.	
06	E.D. Mich.	no	N/A	N/A	
06	W.D. Mich.	yes	Local Rule 7: a magistrate judge may order a petitioner proceeding <i>in forma pauperis</i> to pay, within a specified period, a reduced fee, defined as the greater of: (i) 20% of the person's liquid assets including any prison account; or (ii) 5% of the total deposits placed in the prison account during the 6 months preceding the signing of the financial affidavit. The magistrate judge has discretion to make any other appropriate order concerning payment of the reduced fee. Adopted Aug. 1, 1991.	no	Copy of local rule obtained.

Circuit	District	Does the District ever require partial payment of filing fees?	Does the District have a local rule or standing order governing the imposition of partial filing fees? (If yes, describe)	Does the District have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules? (If yes, describe)	Comments
06	N.D. Ohio	no	N/A	N/A	Local Rule 5:1.4(b) requiring payment of a partial filing fee by prisoners seeking to proceed <i>in forma pauperis</i> was rescinded on June 9, 1992 after <u>Clark v. Ocean Brand Tuna</u> , 874 F.2d 48 (6th Cir. 1992) (a district court may not sua sponte dismiss an action as a frivolous <i>in forma pauperis</i> action under 28 USC § 1915(d) after the plaintiff has paid a partial filing fee.).
06	S.D. Ohio	yes	Amended General Order No. 1 filed February 26, 1986: any inmate who seeks leave to proceed <i>in forma pauperis</i> in civil rights cases is required to make a partial payment of filing fees equaling 15% of the inmate's average monthly balance in his institutional fund account for the 6 month period immediately preceding the submission of the application. If this amount should be less than \$5, the inmate will be allowed to proceed <i>in forma pauperis</i> .	no	Copy of order obtained.
06	E.D. Tenn.	yes	Local Rule 4.2: Depending on the amount of funds available to petitioner seeking to proceed <i>in forma pauperis</i> , court may require petitioner to pay a portion of the filing fee. Adopted March 1, 1994.	no	
06	M.D. Tenn.	no	N/A	N/A	M.D. Tenn. discontinued the practice of assessing partial filing fees approximately one year ago in reaction to <u>Clark v. Ocean Brand Tuna</u> , 974 F.2d 48 (6th Cir. 1992) (court could no longer dismiss <i>in forma pauperis</i> petitions where petitioner has paid the partial filing fee under a §1915(d) frivolity review), and a determination that there had been no significant decrease in the number of prison petitions filed.
06	W.D. Tenn.	no	N/A	N/A	W.D. Tenn. is considering implementing a partial filing fee system.
07	C.D. Ill.	yes	Local Rule 2.12: an incarcerated pro se plaintiff seeking leave to proceed <i>in forma pauperis</i> in a §1983 action is required to make a partial prepayment of filing fees in an amount not to exceed 50% of the inmate's average monthly income for the 6 months immediately preceding the submission of the petition; the fee may never exceed the full filing fee. Adopted Jan. 15, 1992.	no	Copy of rule obtained.
07	N.D. Ill.	yes	no	In any civil case were petitioner proceeds <i>in forma pauperis</i> , the judge may impose a partial filing fee based upon recommendation from the pro se law clerk; an informal sliding scale method is used to arrive at a reasonable dollar figure. For prisoner petitions, a partial filing fee may be assessed if a prisoner's average trust fund balance for the preceding 6 months exceeds \$30.	
07	S.D. Ill.	no	N/A	N/A	Reasons why S.D. Ill. decided not to adopt the practice of assessing partial filing fees: creates more work in clerk's office; the amount assessed as a partial fee is not significant enough to deter the filing of frivolous suits.
07	N.D. Ind.	yes	Local Rule 4.3: Anyone seeking to proceed <i>in forma pauperis</i> may be required to make partial payment of filing fees in an amount to be determined by the court; applicant has 30 days to show cause as to why he can't make partial payment. Adopted Jan. 1, 1994. Although not in writing, the judges may use following formula to arrive at a reasonable fee in prisoner cases: 50% of an average of the inmates last 6 month trust account balance.	no	Recently, judges have rarely required petitioner to pay a partial filing fee; they will either grant the petition to proceed <i>in forma pauperis</i> or deny it thus requiring payment of the full fee.
07	S.D. Ind.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
07	E.D. Wis.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
07	W.D. Wis.	no	N/A	N/A	
08	E.D. Ark.	no	N/A	N/A	

Circuit	District	Does the District ever require partial payment of filing fees?	Does the District have a local rule or standing order governing the imposition of partial filing fees? (If yes, describe)	Does the District have an informal policy to impose partial filing fees that has not been placed in a standing order or the local rules? (If yes, describe)	Comments
08	W.D. Ark.	no	N/A	N/A	
08	N.D. Iowa	no	N/A	N/A	Partial filing fees were assessed in N.D. Iowa in the past, but it is no longer done. Afraid that an 8th Cir. decision controls which will prohibit a district judge from dismissing a suit under a §1915(d) frivolity review once a partial filing fee has been paid. See <i>In re Funkhouser</i> , 873 F.2d 1076, 1077 (8th Cir. 1989). However, the practice is being considered for reinstatement.
08	S.D. Iowa	no	N/A	N/A	
08	D. Minn.	no	N/A	N/A	
08	E.D. Mo.	no	N/A	N/A	In 1989, E.D. Mo. repealed their local rule 9(a) which provided for the assessment of partial filing fees because: (1) there was no decrease in the number of prisoner petitions filed; (2) 99.9% of prisoners qualify to proceed <i>in forma pauperis</i> ; (3) if case is dismissed without prejudice for failing to pay partial filing fee, prisoner can refile the case; (4) created additional administrative work to gather petitioners financial information and calculate the partial fee; (5) afraid that an 8th Cir. decision controls which will prohibit a district judge from dismissing a suit under a §1915(d) frivolity review once a partial filing fee has been paid. See <i>In re Funkhouser</i> , 873 F.2d 1076, 1077 (8th Cir. 1989).
08	W.D. Mo.	yes	Local Rule 9: for all <i>in forma pauperis</i> petitions(except in cases filed under §§ 2254, 2255), if the court concludes the applicant can't pay the full filing fee, the court may require payment of a partial filing fee which should not cause applicant to give up basic life necessities. If applicant is incarcerated, a partial filing fee of 10% of applicant's monthly income for the 6 months immediately preceding filing of complaint may be imposed. A partial filing fee of less than \$1.50 may never be imposed. Adopted Jan., 1983, amended Nov. 1991.	no	Copy of local rule obtained.
08	D. N.D.	no	N/A	N/A	
08	D. Neb.	yes	Local Rule 83.11: upon review of an <i>in forma pauperis</i> petition, court may order applicant to pay all or part of the filing fee provided any partial filing fee doesn't exceed 30% of the average monthly income to trust account for 6 months preceding filing of the action or, 30% of the account balance at the time of filing, whichever is greater; the partial filing fee can't be less than \$2.00. If partial filing fee is based on current balance of applicant's trust account, court may require a higher partial filing fee if applicant has withdrawn funds from account to avoid payment of the filing fee. Adopted Jan. 4, 1993.	no	Copy of local rule obtained.
08	D. S.D.	no	N/A	N/A	
09	D. Alaska	no	N/A	N/A	A provision regarding the partial payment of filing fees may be included in the new D. Alaska local rules expected to be enacted in 1995.
09	D. Ariz.	no	N/A	N/A	
09	C.D. Cal.	no	N/A	N/A	
09	E.D. Cal.	no	N/A	N/A	
09	N.D. Cal.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
09	S.D. Cal.	no	N/A	N/A	
09	D. Guam	no	N/A	N/A	
09	D. Haw.	no	N/A	N/A	
09	D. Idaho	yes	no	In all prisoner petitions to proceed <i>in forma pauperis</i> , upon review of prisoners financial affidavit, magistrate judge may assess a partial filing fee based upon the funds the prisoner currently has in his account; done on a case by case basis, under the judges discretion, with no guidelines followed.	D. Idaho is currently working on promulgating a set of guidelines to be used in determining the portion of the filing fee the petitioner must pay (e.g., if prisoner has \$x in his account he will pay x% of the filing fee).

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09	D.N. Mar.I.	no	N/A	N/A	
09	D. Mont.	yes	no	Although partial filing fees are not imposed in the Billings Division, in the Missoula and Helena Divisions(W. Mont.) the judge may require an applicant seeking to proceed <i>in forma pauperis</i> to pay a partial filing fee where applicant is able to pay something; this is rarely done (only two times in the past two in one-half years).	
09	D. Nev.	yes	Local Rule 215(h): leave to proceed <i>in forma pauperis</i> in petitions for habeas corpus pursuant to 28 U.S.C. §§ 2241, 2254, and motions pursuant to § 2255 may be denied if value of accessible money and securities in petitioner's accounts exceeds \$75 or such other amounts as court may determine; leave to proceed <i>in forma pauperis</i> on civil rights complaints pursuant to 42 U.S.C. § 1983 may be denied if value of accessible money and securities in plaintiff's accounts exceeds \$200 or such amount(s) as court may determine. If less than the above amounts are accessible to petitioner, court may in its discretion require payment of a lower filing fee pursuant to a court-approved fee schedule when ordering that a petitioner may proceed <i>in forma pauperis</i> . Adopted February 1, 1992. Plan for the Implementation of a Partial Filing Fee Schedule for Civil Rights Complaints Filed Pursuant to 42 U.S.C §1983 Adopted July 1, 1992: establishes procedures to implement a partial filing fee schedule to be applied to civil rights complaints filed by both prisoner and non-prisoner plaintiffs. These plaintiffs are required to submit with the civil right complaint a motion for leave to proceed <i>in forma pauperis</i> on a court-provided form. For inmates, the required financial certificate from the institution of confinement that they must submit with the motion to proceed <i>in forma pauperis</i> will show whether they must pay a partial filing fee. This fee is determined by applying the greater of their current account balance or their average monthly net deposits for the past 6 months to the Partial Filing Fee Chart. Petitioner may submit a waiver from the partial filing fee chart if they believe special circumstances should exempt them from having to pay the filing fee as reflected on the financial certificate.	no	Copies of the local rule, plan for implementing a partial filing fee schedule, filing fee chart, and motion to proceed <i>in forma pauperis</i> have been obtained. Note that the approach taken by D. Nev. is unique and aimed at alleviating the administrative problems other districts have encountered in the implementation of a partial filing fee system. The prisoner is aware of whether or not he will have to pay a partial fee and the amount before he files his civil rights complaint with the court. Nev. is revising its local rules and will be including an improved fee schedule.
09	D. Or.	no	N/A	N/A	
09	E.D. Wash.	no	N/A	N/A	Enactment of a partial filing fee system is under consideration in E.D. Wash.
09	W.D. Wash.	no	N/A	N/A	
10	D. Colo.	no	N/A	N/A	
10	D. Kan.	no	N/A	N/A	
10	D. N.M.	no	N/A	N/A	
10	E.D. Okla.	no	N/A	N/A	
10	N.D. Okla.	no	N/A	N/A	
10	W.D. Okla.	no	N/A	N/A	W.D. Okla. is considering a provision addressing partial or installment payment of filing fees in the revised rules to be adopted in January of 1995.
10	D. Utah	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
10	D. Wyo.	no	N/A	N/A	
11	M.D. Ala.	yes	Order filed Sept. 23, 1987: for all petitions to proceed <i>in forma pauperis</i> , court is ordered to ascertain whether a partial payment of filing fees should be required; order sets out advisory criteria based on petitioners' present economic status that court should consider in determining a reasonable payment in 42 U.S.C. §1983 cases; for cases filed pursuant to 28 U.S.C. §2254, the court should consider requiring inmates to pay the \$5 filing fee if they have \$25 or more in their prison accounts; these are guidelines only not precluding consideration of other variables inherent in a §1915 determination.	no	Copy of order obtained.

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11	N.D. Ala.	yes	no	The local practice which became prevalent in 1987 is for a magistrate judge in all prisoner petitions proceeding <i>in forma pauperis</i> to assess a partial filing fee approximately equal to the greater of 30% of either 1) the inmates average monthly balance for the preceding six months; or 2) the amount currently in the inmate's prison account. These guidelines are flexible and the judge can take other factors into account. Prisoner is given the opportunity to explain why the assessment of a partial filing fee is not appropriate.	N.D. Ala. does have guidelines for assessing partial filing fees set out in writing in the form of either an order or local rule, but after persistent attempts they were not able to locate them.
11	S.D. Ala.	yes	no	In prisoner §1983 and §2254 cases where a motion to proceed <i>in forma pauperis</i> is filed, the three magistrate judges may assess a partial filing fee based upon an informal filing fee formula: Whichever figure is greater, thirty percent (30%) of the average monthly deposit for the past four (4) months in an inmate's account or thirty percent (30%) of the account's balance. This formula has not been placed in a standing order or the local rules at this time.	S.D. Ala.'s local rules are being re-written, and it is contemplated that the informal formula will be incorporated in them with a few modifications, one being the application of the formula to all <i>in forma pauperis</i> cases. A written memo verifying the preceding information has been obtained.
11	M.D. Fla.	yes	Local Rule 4.07: court has discretion to order any party seeking to proceed <i>in forma pauperis</i> to pay a portion of the clerk's and/or marshal's fees within a prescribed time; if petitioner fails to do so the action may be dismissed without prejudice. Adopted Nov. 21, 1983. The court uses the following internal guidelines to arrive at the amount petitioner has to pay as a filing fee in prisoner cases brought under §§1983, 2254, & 2255: 30% of the higher of 1) the amount in petitioner's prison account plus any assets possessed just prior to filing complaint; or 2) the total deposits placed in prisoners' account for the 3 months preceding filing of complaint, divided by three.	no	Copy of both local rule and internal guidelines obtained.
11	N.D. Fla.	no	N/A	N/A	
11	S.D. Fla.	no	N/A	N/A	
11	M.D. Ga.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	
11	N.D. Ga.	yes	no	In all petitions to proceed <i>in forma pauperis</i> , upon review of petitioners financial affidavit, judge may assess a partial filing fee based upon the funds the petitioner has available; done on a case by case basis, under the judges total discretion, with no guidelines followed.	
11	S.D. Ga.	yes	no	In prisoner petitions to proceed <i>in forma pauperis</i> in §§ 1983 & 2254 cases, upon review of prisoners' financial affidavit, judge may assess a partial filing fee based upon the funds the prisoner has available; done on a case by case basis, under the judges discretion, with no guidelines followed.	