

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:  
PROCEDURES AND POLICIES FOR  
PRO SE PRISONER CASES

18-MC-00004-35

**ADMINISTRATIVE ORDER**

This Administrative Order supersedes prior District Court procedures and policies for preliminary screening of pro se prisoner cases under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2), Rule 4 Governing Section 2255 Proceedings, and Rule 4 Governing Section 2254 Proceedings by: (1) changing the timing for entry of the Order of Reference to a Magistrate Judge under 28 U.S.C. § 636(b)(1)(B); and (2) approving use of a Prisoner Case Management Order in pro se prisoner cases.

Federal law, particularly the Prison Litigation Reform Act, requires the Court to conduct a preliminary screening of all pro se prisoner cases, including:

- (1) prisoner civil rights cases under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), including prisoner civil rights cases removed from state court (nature of suit 550 and 555);
- (2) habeas corpus cases under 28 U.S.C. § 2254 by prisoners in custody under a state conviction and sentence (nature of suit 530);
- (3) habeas corpus cases under 28 U.S.C. § 2255 by prisoners in custody under a federal conviction and sentence (nature of suit 510);
- (4) habeas corpus cases under the Indian Civil Rights Act, 25 U.S.C. § 1303 by prisoners in custody under a tribal conviction and sentence (nature of suit 530);
- (5) habeas corpus cases under 28 U.S.C. § 2241 by alien detainees in custody pursuant to the Immigration and Nationality Act (nature of suit 463);
- (6) habeas corpus cases under 28 U.S.C. § 2241 challenging the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions (nature of suit 555);
- (7) petitions by prisoners for writs other than habeas corpus, including mandamus, quo warranto, coram nobis, or audita querela (nature of suit 540).

The Court mandatorily must dismiss any pro se prisoner case that fails for any of the reasons enumerated in the statutes and rules. *See* 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2), Rule 4 of the Rules Governing Section 2254 Cases and Rule 4 of the Rules Governing Section 2255 Cases.

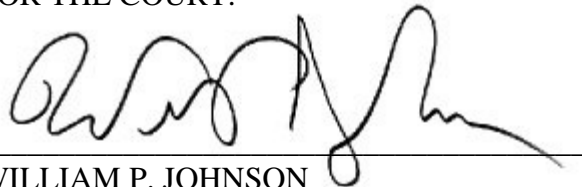
The Pro Se Clerks perform the Court's preliminary screening function and prepare memorandum opinions and orders of dismissal for consideration and entry by the assigned District Judge. Only those cases that survive preliminary screening proceed forward to proposed findings and a recommended disposition by a Magistrate Judge under § 636(b)(1)(B). At present, the Court's practice is to enter Orders of Reference to a Magistrate Judge under 28 U.S.C. § 636(b)(1)(B) in every pro se prisoner case at the time the case is opened. This Administrative Order discontinues the automatic entry of § 636(b)(1)(B) Orders of Reference in all prisoner cases at the start of the case. When preliminary screening is completed, for those cases that are not subject to mandatory dismissal, the Pro Se Clerks will prepare the § 636(b)(1)(B) Order of Reference for submission to the assigned District Judge at the same time the Pro Se Clerks prepare the order to answer or for issuance and service of process. Upon entry of the § 636(b)(1)(B) Order of Reference by the District Judge, responsibility for the case will shift from the Pro Se Clerks to the Magistrate Judge's chambers.

During the screening stage, the assigned Magistrate Judge continues to have the authority under 28 U.S.C. § 636(b)(1)(A) to enter any pretrial orders requested by the Pro Se Clerks or deemed necessary and appropriate by the Magistrate Judge in prisoner cases. The filing of multiple amendments and supplements to the complaint or petition, submission of evidence and documents for the Court's consideration, and bringing of premature motions for a variety of relief, such as discovery, service of process, and default judgments significantly burdens the Court and delays the preliminary screening process. In order to institute early control over

prisoner case submissions, expedite preliminary screening, provide due process in the form of notice and information to the pro se prisoners, and reduce unnecessary work in processing filings, the Magistrate Judge is authorized to enter a Pro Se Prisoner Case Management Order in a form similar to the attached form.

**DONE** at Albuquerque this 6<sup>th</sup> day of September, 2018.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON  
CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOHN DOE,

[Plaintiff/Petitioner],

vs.

No. CV \_\_\_\_\_

JANE DOE, (et al.,)

[Defendant(s)/Respondent(s)].

**PRO SE PRISONER  
CASE MANAGEMENT ORDER**

THIS MATTER is before the Court *sua sponte*. The Court has received and docketed the [Prisoner Civil Rights Complaint/Petition for Writ of Habeas Corpus] filed pro se by [Plaintiff/Petitioner] John Doe on \_\_\_\_\_, 20\_\_ [and removed to this Court by Defendant(s) on \_\_\_\_\_, 20\_\_]. [Plaintiff/Petitioner/the parties] shall include the case number, CV \_\_\_\_\_, on all papers filed in this proceeding.

[Plaintiff/Petitioner/the parties] must comply with the Federal Rules of Civil Procedure, the Local Rules of this Court, and any Order of the Court. Failure to comply with the Rules or Court Orders may result in dismissal of this case or other sanctions. Fed. R. Civ. P. 41(b); *see, also, Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir.1994). [Plaintiff/Petitioner/the parties] [is/are] obligated to keep the Court advised of any changes in [Plaintiff's/Petitioner's/the party's] mailing address. Failure to keep the Court informed of [Plaintiff's/Petitioner's/the party's] correct address may also result in dismissal of the case or other sanctions. D.N.M. LR-Civ. 83.6.

Because [Plaintiff/Petitioner] is a prisoner proceeding pro se, the Court is obligated to conduct a preliminary screening of the [Complaint/Petition]. *See* 28 U.S.C. § 1915A/28 U.S.C. §

1915(e)(2)/Rule 4 of the Rules Governing Section 2254 Proceedings/Rule 4 of the Rules Governing Section 2255 Proceedings]. Whenever a prisoner brings a civil action against government officials, the Court is obligated to screen the prisoner's complaint or petition. 28 U.S.C. § 1915A. Section 1915A states:

“The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”

...

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—  
(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or  
(2) seeks monetary relief from a defendant who is immune from such relief.”

28 U.S.C. § 1915A(a) and (b). The Court has a similar obligation to screen the complaint when a pro se plaintiff is proceeding without prepayment of fees and costs under 28 U.S.C. § 1915(e)(2):

“Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—  
(A) the allegation of poverty is untrue; or  
(B) the action or appeal—  
(i) is frivolous or malicious;  
(ii) fails to state a claim on which relief may be granted; or  
(iii) seeks monetary relief against a defendant who is immune from such relief.

Any request to the Court for relief must be in the form of a motion. Fed. R. Civ. P. 7(b). The filing of excessive motions may cause substantial delay in completion of the Court's preliminary screening and resolution of the case. [Plaintiff/Petitioner/the parties] should avoid filing unnecessary motions. Requests for service of process, discovery, and submissions of proof are premature and unavailable prior to the Court's completion of its screening obligation. *See Jones v. Bock*, 549 U.S. 199, 213-214 (2007). If [Plaintiff's/Petitioner's] [Complaint/Petition] is

not dismissed on initial screening, the Court will enter further orders governing service of process, discovery, and scheduling. [Plaintiff/Petitioner/the parties] should not send any letters to the Court other than transmittal letters or requests for information or copies. All mail relating to this case must be directed to the Clerk of the Court. [Plaintiff/Petitioner/the parties] [is/are] not to send any mail directly to the assigned District Judge or the assigned Magistrate Judge.

[OPTIONAL : In order to permit the Court to complete its initial screening obligation, [Plaintiff/Petitioner/the parties] may not file any further papers in this case except for:

- (1) a motion for leave to amend the [Complaint/Petition]. [Plaintiff/Petitioner] may only file one (1) motion for leave to amend;
- (2) a response to, objection to, or request for modification of, a Court Order;
- (3) a motion for extension of time to comply with or respond to a Court Order;
- (4) a motion or application to proceed without prepaying fees and costs under 28 U.S.C. § 1915;
- (5) a motion requesting appointment of counsel;
- (6) a motion for a temporary restraining order or preliminary injunction, signed under penalty of perjury and supported by good faith factual allegations that [Plaintiff/Petitioner] is in immediate danger of serious bodily injury or will suffer immediate, irreparable harm if not granted relief by the Court;
- [(7) a motion under Fed. R. Civ. P. 12];
- [(8) a motion to remand to state court;]
- (9) a notice of change of address; or
- (10) a motion for leave to file any other paper, supported by a detailed explanation, signed under penalty of perjury, showing good cause why filing of the paper cannot wait until after the Court has completed its screening of the case.]

**IT IS ORDERED** that this Case Management Order shall govern proceedings in this case until further order of the Court.

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UNITED STATES MAGISTRATE JUDGE

**Notices**[1:18-mc-00004 Administrative Orders](#)**U.S. District Court****District of New Mexico - Version 6.2.1****Notice of Electronic Filing**

The following transaction was entered on 9/6/2018 at 4:42 PM MDT and filed on 9/6/2018

**Case Name:** Administrative Orders

**Case Number:** [1:18-mc-00004](#)

**Filer:**

**Document Number:** [35](#)

**Docket Text:**

**ADMINISTRATIVE ORDER: In the Matter of Procedures and Policies for Pro Se Prisoner Cases. (Attachments: # (1) Case Management Order) (kmk)**

**1:18-mc-00004 Notice has been electronically mailed to:**

**1:18-mc-00004 Notice has been delivered by fax to:**

**1:18-mc-00004 Notice has been delivered by USPS to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:** Case Management Order

**Original filename:**n/a

**Electronic document Stamp:**

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