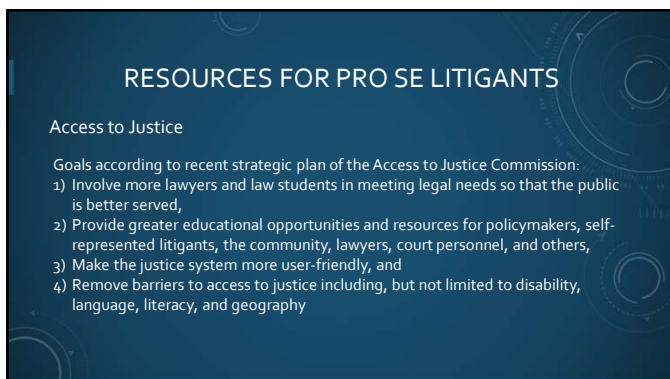




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RESOURCES FOR PRO SE LITIGANTS

- Justiceforalltn.org
- Help4TN Legal Help Line (1-844-435-7496)
- tn.freelegalanswers.org
- Legal Aid Society

4

ASSISTING PRO SE LITIGANTS

- Clerks have an absolute duty of impartiality
- Clerks cannot give legal advice
 - Includes: recommending whether to file a petition or other pleading, recommend phrasing or specific content for pleadings, fill in a form for the self-represented person unless that person has a physical disability or is illiterate, recommend specific people against whom to file petitions or other pleadings
 - If you are uncertain whether the advice or information is legal advice, inform the person that you are not authorized to provide legal advice and they should seek the assistance of an attorney
- Clerks cannot refer attorneys or mediators
- Clerks cannot reveal the outcome of a case before the information is officially released to the litigants or public

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ASSISTING PRO SE LITIGANTS

- Clerks can provide information about dockets or calendars, case files, etc. unless prohibited by statute or court rule
- Clerks can provide a copy of court rules and court procedures
- Clerks can show or tell the self-represented person where to access statutes or rules of procedure
- Clerks can identify forms and informational booklets that might meet the needs of the person that are available in the clerk's office
 - The clerk should avoid telling the litigant that they must or should use a particular form
 - Advise litigants that the clerk cannot guarantee that this is the correct form and the litigant should read the form very closely or consult an attorney
- Clerks can provide numbers for legal assistance organizations, mediator and lawyer referral services, and other judicially approved programs providing assistance to self-represented persons
- If a party makes a verbal request that a judge take some type of action in a case, the clerk should tell the litigant to put the request in writing

6

INMATE LAWSUITS



7

INMATE LAWSUITS

- Complaint for Violation of Civil Rights
- Petition for Writ of Certiorari
- Petition for Conversion of Personal Property
- Post-Conviction Proceedings

8

VENUE

- Tenn. Code Ann. 41-21-803
 - Only actions that accrued while the inmate was housed in the facility
 - Has to be filed in the county where the facility is located

9

REQUIREMENTS FOR INMATES FILING LAWSUITS

In 1996, Tennessee adopted the Prison Litigation Reform statutes in an effort to reduce the number of frivolous claims filed by indigent inmates



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REQUIREMENTS FOR INMATES FILING LAWSUITS

- Tenn. Code Ann 41-21-805
- Must file affidavit of indigency
- Must file a separate affidavit accompanied with an affidavit of indigency with:
 - (a) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and
 - (2) For each claim or action listed in subsection (a):
 - (A) The operative facts for which relief was sought;
 - (B) The case name, case number and court in which the suit or claim was filed;
 - (C) The legal theory on which the relief sought was based;
 - (D) The identification of each party named in the action; and
 - (E) The final result of the action, including dismissal as frivolous or malicious under this part or otherwise.
 - (b) If the affidavit filed under this section states that a previous suit was dismissed as frivolous or malicious, the affidavit must state the date of the final order affirming the dismissal.
 - (c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

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REQUIREMENTS FOR INMATES FILING LAWSUITS

- Tenn. Code Ann. 41-21-806
 - (a) An inmate who files a claim that is subject to review by the grievance committee established by the department shall file with the court an affidavit stating the date that the grievance was filed and the date the final decision was received by the inmate with a copy of the final decision from the grievance committee.
 - (b) The court shall dismiss the claim if the inmate fails to file the claim before the thirty-first day after the date the inmate receives the final decision from the grievance committee.
 - (c) If a claim is filed before the grievance procedure is complete, the court shall stay the proceeding with respect to the claim for a period not to exceed ninety (90) days to permit completion of the grievance procedure.

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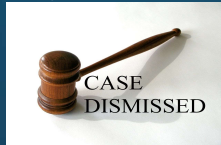
DISMISSAL OF LAWSUIT BY THE COURT

- Tenn. Code Ann. 41-21-804
- Court can dismiss a claim filed by an inmate, before or after service of process on the defendant, if the court finds that:
 - The allegation of poverty in the inmate's affidavit is false; or
 - The claim is frivolous or malicious.
- In determining whether a claim is frivolous or malicious, the court may consider whether or not:
 - The claim has a chance of success;
 - The claim has a basis in law and in fact; and
 - The claim is substantially similar to a previous claim filed by the inmate that arises from the same operative facts
- The court may hold a hearing to make these determinations and may be held on motion of the court, a party to the claim or by any officer of the court.
- Tenn. Code Ann. 41-21-816
 - If their claim is dismissed on grounds that it is frivolous or malicious, the inmate's good conduct sentence reduction can be forfeited

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DISMISSAL OF LAWSUIT BY THE COURT IF REQUIREMENTS FOR FILING NOT MET

- If inmate does not meet requirements for filing in Tenn. Code Ann. 41-21-805 and 806, the court may dismiss without prejudice (not with prejudice because it is not a dismissal on the merits of the case)
- *Roberson v. Lindamood*, 2017 WL 2304697 (Tn. Ct. of Appeals, 2017) – inmate failed to submit a list of his previous lawsuits and claims. After Motion to Dismiss was filed, the inmate filed an affidavit, but failed to list all lawsuits, including two habeas corpus petitions. Inmate argued that the list of lawsuits did not include petitions for post-convictions relief. The court rejected this assertion because it was still a lawsuit. The Court of Appeals ruled that the action must be dismissed without prejudice.



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COLLECTION OF COURT COSTS

- Upon the entry of a Final Order in the case, if the Judge assesses court costs to the Plaintiff/inmate.
- Tenn. Code Ann. 41-21-807
 - An initial partial filing fee of 20% of the greater of the average monthly deposits to the inmate's accounts or balance in the inmate's account for the six-month period immediately preceding the filing of the complaint or notice of appeal.
 - After payment of the initial partial filing fee, inmate shall be required to make monthly payments of 20% of the preceding month's income credited to the inmate's account. The prison or facility shall forward payments from the inmate's account to the clerk of the court each time the amount in the account exceeds \$10.00 until the filing fees are paid.
- Tenn. Code Ann. 41-21-808
 - The clerk of the court shall mail a copy of the court's judgment taxing costs against the inmate to the department or county jail and the facility shall forward payments monthly to the court clerk as provided in Tenn. Code Ann. 41-21-807.
- A clerk of a court may not accept for filing another claim by the same inmate until prior fees, taxes and costs are paid in full. However, the court may allow an inmate who has not paid to seek injunctive relief to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the inmate.

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DIVORCES AND NAME CHANGES FILED BY INMATES

- If you have a prison in your county or your county jail houses state inmates, you may have had inmates file divorces or name changes in your county
- Divorce venue is not proper if the inmate was not a citizen of the county prior to their incarceration, is not the place of separation of the parties, and if the defendant is not a resident of your county – Tenn. Code Ann. 36-4-105
- Name change venue is not proper if the inmate was not a citizen of the county prior to their incarceration – Tenn. Code Ann. 29-8-102
- *In re Joseph*, 87 S.W. 3d 513 –
 - Prisoner must allege or prove that they are a resident of the county when they file the petition
 - The person's residence means their legal residence or domicile.
 - Domicile is volitional; therefore, a forceable change in a person's place of residence ordinarily does not alter the person's domicile.
 - An inmate's domicile remains what it was before their incarceration.

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NAME CHANGES

Other Considerations:

- Must state in Petition they have not been convicted of one of offenses listed in Tenn. Code Ann. 29-8-101(b)(1). First or second degree murder or any offense which requires a sexual offender to register pursuant to the Tenn. Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004
- If the person seeking to have the person's name changed has a felony conviction, other than for the offenses listed above, the petition is presumed to be made in bad faith, to defraud or mislead, to cause injury to an individual or to compromise public safety. The name change shall not be granted unless the individual requesting the name change proves by clear and convincing evidence that the Petition is not based upon an intent to defraud or mislead is made in good faith, will not cause injury to an individual and will not compromise public safety.
- No public funds shall be expended to change the name any person who is an inmate in the custody of the department of correction

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QUESTIONS???

THANK YOU!



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