

Background: Plaintiff is a *poor person* litigating a federal case
Problem: Access to court records is conditioned on payment
Request: This Court grants Plaintiff a PACER Fee Exemption

28 USC §1914 | Filing and Miscellaneous Fees | emphasis added

"(b) The clerk [of each district court] shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States."

JCUS | Fee Exemptions | emphasis added^{1/}

"Courts may exempt certain persons or classes of persons from payment of the user access fee. Examples of individuals and groups that a court may consider exempting include: indigents..."

PACER | Email on Fee Exemptions | 10/27/2020

"In forma Pauperis does not provide the PACER Service Center the authority to exempt your PACER account... If you wish to request a PACER exemption, write to the Chief Judge or Clerk of Court for the jurisdiction for which you wish to obtain free PACER access..."

Precedence

- 6:07-cv-06247-DGL-JWF - USNYWD (3/23/10)
Federal district courts have granted similar requests

Abbreviations:

JCUS - Judicial Conference of the United States
USFLMD - US District Court, Florida, Middle District
USNYWD - US District Court, New York, Western District

MOTION

I. Relevant History

1. PACER (Public Access to Court Electronic Records) is a third-party service of the federal Judiciary; funded through user fees set by JCUS. It houses case dockets for federal district courts (including USFLMD).
2. On August 12, 2020, Plaintiff filed an application to proceed *in forma pauperis* (Doc No. 2).
3. On October 9, 2020, this Court approved Plaintiff's application (#15).
4. Plaintiff received said order on October 21, 2020 (via postal mail).
5. The following day, he emailed it to PACER; asking for a fee exemption.
6. Yesterday - on October 27, 2020 - PACER responded by telling Plaintiff he would need a separate order from this Court to satisfy that request.

II. Standard for Review

7. Pursuant to 28 USC §1914(b), PACER fees qualify as "additional fees" set by JCUS. According to JCUS, additional fees can be exempted by court order.
8. In considering granting an exemption, JCUS said that a court must find:

"that those seeking an exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information... the user receiving the exemption must agree not to sell [or transfer] the data obtained... the exemption should be granted for a definite period of time [and] should be limited in scope."

- JCUS | USCourts.gov^{1/}

9. In short, Plaintiff must show that:

- (a) the exemption is necessary to avoid unreasonable burdens;
- (b) the exemption will promote public access to information;
- (c) he will not sell/transfer the data obtained; and
- (d) access will only be needed for specific times.

10. Plaintiff can satisfy all four items, as follows.

III. Analysis

Quell an Unreasonable Burden

11. Plaintiff contends that PACER's current fee schedule is too costly (and thus unreasonable) for Plaintiff's set of circumstances.

12. For starters, Plaintiff is a poor person - acknowledged by this Court's order (#15, 10/9/20).

13. PACER's \$0.10/page charge would equate to \$113 per [Plaintiff-]court document (see **Exhibit A**). An amount that operates as a deterrent to justice.

14. As an alternative to downloading PACER's files, Plaintiff could visit USFLMD's Clerk's Office to read documents in person. This, however, has larger drawbacks:

- [1] Limited hours of access (40 hours vs 168 hours)^{2/}
- [2] Significant travel times (3-hour roundtrip commutes)
- [3] Travel costs (\$3.50 roundtrip)
- [4] Restricted physical access (due to COVID19 pandemic)
- [5] \$0.10/page to print a document

15. Moreover, Plaintiff's suit against Defendant originated in state court (Florida). A tribunal that did not require payment for accessing civil dockets; which further highlights the magnitude of Plaintiff's burden.

16. With those factors in tow, Plaintiff states that it would be unreasonable to charge him - a *poor person* - money to use PACER. As such, Plaintiff asserts that he has satisfied the first prong in the 4-part test for fee exemption.

Promote Public Access to Public Information

17. Plaintiff avers that a PACER fee exemption would (a) enhance public access; and (b) benefit all participants of this civil action.

18. For starters, Plaintiff - a taxpaying US resident - is a member of the public. And as a member of the public Plaintiff is accorded the right to access public records. These public records include the court records that PACER houses.

19. With the current fee schedule in place, however, Plaintiff is avoiding PACER's online portal (see ¶13 *supra*). Opting, instead, for free resources.

20. Free alternatives which inhibit Plaintiff's ability to litigate his case. This is because they lack procedural case law; a problem not shared by PACER.

21. In several ways, this Court would benefit from a more-informed version of Plaintiff. For one, it would probably experience a reduced workload on account of better motions/responses/notices. Plus, this Court's involvement in discovery disputes would likely decrease if Plaintiff's abilities were more informed. And, of course, the record [and potential appellate proceeding] would be much cleaner with an informed Plaintiff.

22. Defendant - as Plaintiff contends - would enjoy these same benefits.

23. In short, a fee exemption would promote public access and benefit all case participants. Thus, Plaintiff has satisfied the 2nd prong in the 4-part test for fee exemption.

Not for Sale

24. Plaintiff will neither sell nor transfer any of the court records obtained by the fee exemption (please see Affidavit). He will only need PACER for functional reasons. Prong three satisfied.

Specific Purpose

25. Plaintiff only needs access to PACER for the duration of his case. He defines that period like this:

[1] Starting Date = Now (ie, October 2020)

[2] Ending Date = [a], [b], or [c] (whichever is later)

[a] = the end of the immediate case {USFLMD}

[b] = the end of the appellate case {11th Circuit}

[c] = the end of the supreme court case {US Supreme Court}

26. Therefore, Plaintiff has satisfied the fourth prong in the four-prong test for fee exemption.

IV. Summary

27. In all, this Court has good reason to grant Plaintiff a PACER fee exemption because (a) it will alleviate him of an unreasonable burden; (b) it will serve the greater good; (c) it will be used properly; and (d) it will only be needed for the duration of Plaintiff's case.

CONFERRAL

On October 28, 2020, Defendant told Plaintiff (via email) that it had no objection to this motion.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to enter an Order Exempting Plaintiff from the Fees Imposed by the PACER Fee Schedule.

Dated this 28th day of October 2020.

Respectfully submitted,

ELIAS MAKERE, FSA, MAAA, Plaintiff
s/ Elias Makere, Pro Se
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
Tel: (904) 294-0026
E-mail: justice.actuarial@gmail.com

CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October 2020, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. I also emailed it to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} source = <https://www.uscourts.gov/services-forms/fees/electronic-public-access-fee-schedule>

^{2/} "Limited Access":

40 hours = maximum business hours per week.

168 hours = maximum electronic/natural hours per week.

SERVICE LIST

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Heather A. Johnson, Esquire (*pro hac vice*)
Michele A. Ramos, Esquire (1008119)

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E: hajohnson@littler.com
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P: 407.393.2900
F: 407.393.2929

Littler Mendleson, PC
111 North Orange Avenue, Suite 1750
Orlando, FL 32801-2366

(defendant's trial lawyers)

EXHIBIT A

Plaintiff's Rough Estimate of PACER Expenses

Author: Plaintiff

10/28/2020

ESTIMATED COST TO FILE ONE DOCUMENT**\$113**CALCULATION

C	N	S
\$0.10	200	5.65

WHERE:

C = PACER's charge to download/view court records (per page cost)

N = the average number of documents researched during file preparation

S = the average size of a court document (page count)

Calculation: $\$0.10 \times 200 \times 5.65 = \mathbf{\$113}$

EXPLANATION

- I got 'C' from PACER. The ten-cent rate is as of October 2020.
- I estimated 'N' from my research experience (quick/rough estimate). I think this is a conservative estimate; because I know of several occasions in which I've researched many more documents in preparing a legal filing.
- I calculated 'S' by performing a random selection of my previously downloaded DOAH records (Florida's Division of Administrative Hearings). Population Size = 31,976 records. Sample Size = 100 records. Average Page Count = 5.65.

VERIFICATION

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of October 2020.

UNITED STATES OF AMERICA



10/28/2020

Elias Makere, Plaintiff

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26. Therefore, Plaintiff has satisfied the fourth prong in the four-prong test for fee exemption.

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s/ Elias Makere, Pro Se
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Tel: (904) 294-0026
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