

8. PRISONER'S RIGHT OF ACCESS TO COURTS

8.01 DESCRIPTION OF CLAIM

In this case, Plaintiff claims that Defendant intentionally denied [him/her] meaningful access to the courts. Plaintiff claims that Defendant did this by [*describe conduct*].

Let me explain the concept of “access to courts” in a bit more detail. The Constitution gives us the right to go to court when we have disputes with others. People who are in prison also have a right of “access to courts.” By this I mean that a prisoner is entitled to get meaningful help in [preparing and/or filing] [his/her] lawsuit. [This might include talking to people with legal training, such as lawyers, law students, or paralegals. Or it might simply mean access to a law library or legal reference materials. It can also include the opportunity to communicate privately with an attorney.]

A prison official can consider security risks in deciding what kind of access to give the prisoner. [For example, a prison official does not need to give a prisoner personal access to a library if that would be dangerous. Instead, the official can find other ways of giving the prisoner materials that he needs to file [his/her] lawsuit and make legal arguments.] Inconvenient or highly restrictive regulations may be appropriate if they do not completely deny meaningful access to courts.

A Plaintiff must show more than just some minimal degree of impediment in filing claims to succeed on an access to court claim.

Committee Comments

a. Authority: See *Christopher v. Harbury*, 536 U.S. 403 (2002); *Lewis v. Casey*, 518 U.S. 343 (1996); *Jones v. Van Lanen*, 27 F.4th 1280 (7th Cir. 2022); *Guajardo-Palma v. Martinson*, 622 F.3d 801 (7th Cir. 2010); *Lehn v. Holmes*, 364 F.3d 862 (7th Cir. 2004); *Brooks v. Buscher*, 62 F.3d 176 (7th Cir. 1995).

b. Type of Underlying Suit: Prisons must provide meaningful help for a prisoner’s appeal of his conviction, habeas corpus action, or civil rights action challenging his condition of confinement. *Marshall v. Knight*, 445 F.3d 965 (7th Cir. 2006). For all other types of civil lawsuits, the prison officials may not create barriers that impede the prisoner’s right of access to the courts, *Snyder v. Nolen*, 380 F.3d 279 (7th Cir. 2004), and the instruction should be modified accordingly.

8.02 DENIAL OF PRISONER'S ACCESS TO COURT

To succeed in a claim of denial of access to court, Plaintiff must prove each of the following things by a preponderance of the evidence.

1. Defendant intentionally did at least one of the following things: [*describe conduct*].

[2. Defendant acted “under color of law.” By this I mean that a person performs, or claims to perform, official duties under any state, county, or municipal law, ordinance, or regulation.]

3. Defendant’s conduct hindered Plaintiff’s efforts to pursue a legal claim.

[4. The case which Plaintiff wanted to bring to court was not frivolous. A claim is frivolous if it is so trivial that there is no chance it would succeed in court or be settled out of court after it was filed.]

5. Plaintiff was harmed by Defendant’s conduct.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff has failed to prove any one of these things by a preponderance of the evidence, then you should find for Defendant, and you will not consider the question of damages.

Committee Comments

a. Authority: See *Christopher v. Harbury*, 536 U.S. 403 (2002); *Jones v. Van Lanen*, 27 F.4th 1280 (7th Cir. 2022); *Guajardo-Palma v. Martinson*, 622 F.3d 801 (7th Cir. 2010); *Snyder v. Nolen*, 380 F.3d 279 (7th Cir. 2004); *Lehn v. Holmes*, 364 F.3d 862 (7th Cir. 2004); *Brooks v. Buscher*, 62 F.3d 176 (7th Cir. 1995).

b. Two Categories of Claims: There are two categories of access to court claims—forward looking and backward looking. *Christopher*, 536 U.S. at 413. Forward looking claims are those in which the Plaintiff alleges the Defendant is frustrating the preparing and/or filing suits at the present time. *Id.* An example of a forward looking claim would be one in which the Plaintiff alleges the inability to use the law library to prepare a lawsuit. *Id.* Backward looking claims are those in which the Plaintiff alleges that the Defendant caused the loss or inadequate settlement of a meritorious case. *Id.* at 414. Backward looking claims do not look forward to future litigation, “but backward to a time when specific litigation ended poorly, or could not have commenced, or could have produced a remedy subsequently unobtainable.” *Id.*

c. Under Color of Law: The second element should be eliminated if the “under color of law” issue is not in dispute.

d. Hindered Plaintiff’s Efforts: The Plaintiff must make a showing that the Defendant “did something to adversely affect—to frustrate—his effort to vindicate his rights through litigation.” *Jones*, 27 F.4th at 1287.

e. Frivolous Underlying Claim: Similarly, judges should include the bracketed material concerning whether Plaintiff’s claim was frivolous only if this presents a factual issue in the case. *See Lewis v. Casey*, 518 U.S. 343, 353 & n.3 (1996) (“Depriving someone of a frivolous claim . . . deprives him of nothing at all . . .”); *Thomson v. Washington*, 362 F.3d 969, 970 (7th Cir. 2004) (“If your legal papers are confiscated in a doomed proceeding, there is no harm and no basis for a constitutional suit . . . even though there is always a chance that the court would have ruled erroneously in your favor.”). *Cf. Walters v. Edgar*, 163 F.3d 430, 433-434 (7th Cir. 1988) (“probabilistic” harm, which is nontrivial, will support standing for prospective injunctive relief).

f. Harm: *See Lehn v. Holmes*, 364 F.3d 862 (7th Cir. 2004). Harm is shown by evidence identifying “a remedy that may be awarded as recompense but that is not otherwise available in a suit or settlement.” *Harer v. Casey*, 962 F.3d 299, 308 (7th Cir. 2020).

g. Access to Law Library and Legal Materials: “[T]he mere denial of access to a prison library or to other legal materials is not itself a violation of a prisoner’s rights; his right is to access *the courts*, and only if the defendants’ conduct prejudices a potentially meritorious challenge to the prisoner’s conviction [or] sentence . . . has this right been infringed.” *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006).

8.03 DAMAGES

Committee Comments

Use Instructions 7.26, 7.27, and 7.28, as appropriate, listing those elements of damages relevant to the case, as well as the reasonable value of any judgment or settlement Plaintiff would have received if Defendant had not hindered his efforts to pursue his legal claim.