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IN FORMA PAUPERIS: AN UNNECESSARY PRIVILEGE IN BANKRUPTCY

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Excerpt

INTRODUCTION

In forma pauperis has been defined as "in the character or manner of a pauper." 1 Indeed, "it is somewhat ironic that bankruptcy is one legal proceeding that cannot be filed in forma pauperis." 2 This Article discusses the history of in forma pauperis proceedings, the current statutes and rules, and the existing case law, and concludes that "[t]he Bankruptcy Court system was not designed for paupers." 3

I. HISTORICAL DISCUSSION OF IN FORMA PAUPERIS PROCEEDINGS

A. Nonbankruptcy in the Federal Courts

Section 1915(a) of Title 28 of the United States Code, the in forma pauperis statute, enables an indigent to file civil actions in federal courts without paying the requisite filing fee. 4 Although the first in forma pauperis statute was not enacted by Congress until 1892, 5 the notion that a person should not be barred from having access to the courts because of his status as an indigent was recognized hundreds of years ago in the Magna Carta. 6 Section 1915(a) provides as follows:

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken ...

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