

INFORMATION PACKET

RELATING TO

PETITIONS FOR DECLARATION OF
RIGHTS

KRS 418.040

Revised February 2020

I. Declaratory Judgments – Statutes and Rules

Kentucky Revised Statutes (KRS) 418.040 - Plaintiff may obtain declaration of right if actual controversy exists

“In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, whether or not consequential relief is or could be asked.”

Kentucky Civil Rule (CR 57) – Declaratory Judgements

“The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”

II. Declaratory Judgments – Purpose and Examples for Inmates Incarcerated with the Kentucky Department of Corrections (DOC)

Declaratory Judgments are how inmates may appeal decisions made by the Kentucky Department of Corrections after an inmate has exhausted all levels of appeal within DOC. It is very important to remember that an inmate must exhaust all DOC administrative procedures before an appeal may be filed.

Declaratory Judgments are civil actions. They are lawsuits against the Kentucky Department of Corrections.

Some of the most common challenges where Declaratory Judgements are filed by inmates include the following:

1. CPP 15.6 policies were not correctly followed in a disciplinary matter
2. Findings from a disciplinary hearing by and Adjustment Officer or Committee
 - a. i.e. – the facts are incomplete or incorrect
 - b. i.e. – the facts do not support a Category VII punishment
3. Classification Decisions – CPP 18
4. Institutional Wage
5. Any and All Sentencing Credits – CPP 17.4
 - a. Credit on sentence for prior confinements
 - b. Credit for educational accomplishment
 - c. Credit for good behavior

- d. Credit for meritorious service

III. Declaratory Judgements – What, Where, and When

What to File? A Petition for Declaration of Rights, KRS 418.040

Legal Note: A Declaratory Judgment is an Original Action. This means that you will not have a case number associated to the Declaratory Judgment when you file. After you file, a case number will be assigned by the Circuit Court Clerk.

Where to File? In general, you may file in Franklin Circuit Court (Frankfort, Kentucky) or you can file in the Circuit Court of the County where the DOC Institution is located. KRS 418.040 is silent on venue.

Legal Note: The Declaratory Judgment statute is silent about venue. Because it is silent, that means the general venue statutes apply. Under KRS 452.405, "...actions shall be brought in the county where the cause of action, or some part thereof, arose..."

Practice Tip: Filing in the Circuit Court of the County where the DOC Institution is located usually is quicker than filing in Franklin Circuit Court.

Practice Tip: It is possible that the Commonwealth might argue that your case should be dismissed because you filed in Circuit Court of the County where the DOC Institution is located. Simply, the Commonwealth is arguing that you are in the wrong venue. You must respond within ten (10) days if the Commonwealth files a Motion to Dismiss. In the event that Circuit Court agrees, then file in Franklin Circuit Court.

When to File? After you have exhausted all DOC administrative procedures, then you have one (1) year to file the Declaratory Judgment. KRS 413.149(1)(k) states the petition shall be filed within one (1) year from the date the action occurred.

IV. Declaratory Judgments – Service

Declaratory Judgments, like all motions and pleadings, require a Certificate of Service. The Following parties must be served:

1. Circuit Court Clerk of the County where you are filing
2. Department of Corrections, Office of Legal Services, 275 E. Main Street, Frankfort, Kentucky, 40601
3. Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky, 40601

Service is done by mailing the original to the clerk and copies to all other parties.

V. Declaratory Judgments – Standard of Review

A petition for declaratory judgment pursuant to KRS 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of their disputes with the Kentucky Department of Corrections. *Polsgrove v. Kentucky Bureau of Corrections*, 559 S.W.2d 736 (Ky.1977); *Graham v. O'Dea*, 876 S.W.2d 621 (Ky.App.1994).

KRS 418.040 provides:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

In order to state a claim under KRS 418.040, a Petitioner must show “that an actual controversy exists.” *Foley v. Commonwealth*, 306 S.W.3d 28, 31 (Ky.2010). “An actual controversy for purposes of the declaratory judgment statute requires a controversy over present rights, duties, and liabilities; it does not involve a question which is merely hypothetical or an answer which is no more than an advisory opinion.” *Barnett v. Reynolds*, 817 S.W.2d 439 441 (Ky.1991) (citing *Dravo v. Liberty Nat'l Bank & Trust Co.*, 267 S.W.2d 95 (Ky.1954)).

VI. Declaratory Judgment – Checklist

1. Complete an Initial Review
 - a. Is there an **Actual Controversy**?
 - b. Have **ALL** DOC administrative procedures have been **exhausted**?
 - c. Is it within **one (1) year** from when administrative procedures have been exhausted?
 - d. Should this be a Habeas Writ or a Declaratory Judgment?
2. Gather all Documentation, including video or audio
 - a. Documentation of the entire process showing exhaustion is needed and must be attached to the Declaratory Judgment
3. Research the Issue
4. **IF, AND ONLY AFTER THE STEPS ABOVE, YOU BELIEVE THAT SOMETHING WRONG HAPPENED WHICH SHOULD BE APPEALED TO THE CIRCUIT COURT, THEN PREPARE AND FILE A DECLARATORY JUDGMENT¹**
5. If you are preparing and filing a declaratory judgment, then you will also need to do the following:
 - a. Prepare and Include an Appendix of your documentation
 - b. Include a Cover Letter for the Circuit Court Clerk when filing the Declaratory Judgment²

¹ This packet includes an example format for a Declaratory Judgment.

² An example Cover Letter is included within this packet.

- c. File a “Motion to Proceed *In Forma Pauperis* And Appointment of The Kentucky Department of Public Advocacy.”
- d. File an “Order to Proceed on Appeal *In Forma Pauperis* And Appointment of the Kentucky Department of Public Advocacy.”
- e. Make sure all parties have been served.
- f. Within 10 days of filing the Declaratory Judgment check with the Circuit Clerk’s Office (You might even ask if a case number has been assigned)

VII. Declaratory Judgments - Miscellaneous Cases

A. Minimum Due Process: Where a state has created a right, such as any statutory credits towards sentence, and provides they are revocable only by an inmate’s serious misconduct, then there is an interest of real substance, and “is sufficiently embraced within Fourteenth Amendment ‘liberty’ to entitle him those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.” *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). See also, *Webb v. Sharp*, 222 S.W.3d 113, 117-18 (Ky. 2007).

B. Preservation of Error is Very Important: If you do not object to a violation of your rights at the hearing you cannot later raise the issue in court. *Michael O’Dea v. Clark*, 883 S.W.2d 888 (Ky.App. 1994).

C. The Purpose of a Petition for Declaration of Rights: KRS 418.040 defines the purpose of the declaratory judgment as “the declaratory judgment statutes are declared to be remedial; their purpose is to make courts more serviceable to the people by way of settling controversies, and affording relief from uncertainty and insecurity with respect to rights, duties, and relations, and are to be liberally interpreted and administered. *Hammond v. Smith*, 930 S.W.2d 408 (Ky.App. 1996).

D. Burden of Proof in Adjustment Committee Proceeding: Some evidence or modicum of evidence, *Walpole v. Hill*, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) and *Smith v. O’Dea*, 939 S.W.2d 353 (Ky.App. 1997).

E. Right to Call Witnesses in Adjustment Committee Proceeding: Prison officials may be required to explain in a limited manner why witnesses were not allowed to testify. *Ponte v. Real*, 471 U.S. 491, 105 S.Ct. 2192, 85 L.Ed.2d 553 (1985). See also *Wolff, supra*.

F. Right to Written Findings of Adjustment Committee Proceeding: Prisoners must be provided a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken. The statement may be brief. *Ivey v. Wilson*, 577 F.Supp. 169 (W.D. Ky. 1983). See also, *Wolff, supra*, and *Franklin v. Aycock*, 795 F.2d 1253 (6th Cir. 1986).

G. Immunity: Prison officials on adjustment committees do not have absolute immunity. *Cleavinger v. Saxner*, 474 U.S. 193, 106 S.Ct. 496, 88 L.Ed.2d 507 (1985). State

officials have qualified good faith immunity if they are acting within the scope of their official responsibilities. *Hudson v. Edmonson*, 848 F.2d 682 (6th Cir. 1988).

H. Chain of Custody: Adjustment proceeding reversed because of incomplete custody document, evidence must be reliable. *Byerly v. Ashley*, 825 S.W.2d 286 (Ky. App. 1991).

I. Informants Must be Reliable: Prison officials must document reliability of informants. *Hensley v. Wilson*, 850 F.2d 269 (6th Cir. 1988). *Discussed by, Haney v. Thomas*, 406 S.W.3d 823, 825-828 (Ky. 2013).

Example Letter to Circuit Court Clerk

Month ##, 201# (Date)

Hon. Circuit Court County Clerk
Address Line 1
Address Line 2
Address Line 3

Re: Declaratory Judgment, Motion to Proceed *In Forma Pauperis* and Order to Proceed *In Forma Pauperis*.

Dear Clerk:

Enclosed are several *pro-se* pleadings. Within this package the following documents are being filed:

1. A Petition for Declaratory Judgment,
2. A Motion to Proceed *In Forma Pauperis*, and
3. A tendered to Order to Proceed *In Forma Pauperis*.

These pleadings should be file upon receipt. Thank you for your assistance.

Sincerely,

(Inmate's Signature)

Inmate's Printed Name

Example Format for a Declaratory Judgment

COMMONWEALTH OF KENTUCKY
COUNTY CIRCUIT COURT
CIVIL CASE NO: _____-CI-_____

INMATES NAME

PETITIONER

V.

**PRO-SE PETITION FOR DECLARATION
OF RIGHTS PURSUANT TO KRS 418.040**

WARDENS NAME, WARDEN,
NAME OF CORRECTIONAL INSTITUTE
AND
COMMISSIONER'S NAME,
in her official capacity as Commissioner of
the Kentucky Department of Corrections

RESPONDENT

* * * * *

I. Introduction

Comes now __Inmates Name__, *pro-se*, and petition this Court for declaration of rights pursuant to KRS 418.040 in the aforementioned case. __Inmate, FILL-IN-THE-BLANK WITH THE RELIEF YOU ARE REQUESTING_____

Here, you can explain what happened in a few sentences and what relief you are seeking.

_____. Further facts will be adduced.

II. Standard of Law

A petition for declaratory judgment pursuant to KRS 418.040 has become the vehicle, whenever Habeas Corpus proceedings are inappropriate, whereby inmates may seek review of

their disputes with the Kentucky Department of Corrections. *Polsgrove v. Kentucky Bureau of Corrections*, 559 S.W.2d 736 (Ky.1977); *Graham v. O'Dea*, 876 S.W.2d 621 (Ky.App.1994).

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III. Argument

Here is where you will make your argument based upon the law you have researched. You need to compare the law with your case which means you will need to cite to the documents in your Appendix. This is where you explain to the Circuit Court why you are entitled to the relief you are requesting.

IV. Conclusion

Here, you only need one or two sentences summarizing your argument for relief.

WHEREFORE, Petitioner respectfully requests this Honorable Court to grant the following relief ____FILL-IN-THE-BLANK WITH THE RELIEF YOU ARE REQUESTING____

Respectfully submitted,

(Inmate's Signature)

Inmate's Printed Name

NOTICE³

Please take notice the foregoing has been first-class mailed to the County Circuit Court Clerk, Address Line 1, Address Line 2, Address Line 3, on this ____ day of _____, 202- to be filed upon receipt.

(Inmate's Signature)

Inmate's Printed Name

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been first-class mailed to:

1. Department of Corrections
Office of Legal Services

³ Notice and Certificate of Service are to be on a separate page by themselves.

275 E. Main Street
Frankfort, Kentucky, 40601 and

2. Office of the Attorney General
1024 Capital Center Drive
Frankfort, Kentucky, 40601

on this the ____ day of _____, 202.

(Inmate's Signature)

Inmate's Printed Name

**APPENDIX TO *PRO-SE* PETITION FOR DECLARATION
OF RIGHTS PURSUANT TO KRS 418.040⁴**

1. Document I
2. Document II
3. Video I
4. Document III

⁴ The Appendix will be on a separate page by itself followed by the attachments.