

1999DRAFTING REQUEST

Bill

Received: 11/18/1999

Received By: nelsorpl

Wanted: As time permits

Identical to LRB:

For: Robert Goetsch (608) 266-2540

By/Representing: Kent Vernon

This file may be shown to any legislator: NO

Drafter: nelsorpl

May Contact:

Alt. Drafters:

Subject: Courts - civil procedure

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

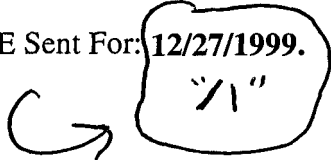
Prisoner litigation, counting of frivolous petitions

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	nelsorp 1 12/03/1999	wjackson 12/03/1999	jfrantze 12/03/1999	_____	lrb-docadmin 12/03/1999		
/1	nelsorp 1 12/10/1999	wjackson 12/10/1999	martykr 12/13/1999	_____	lrb-docadmin 12/13/1999	lrb_docadminS&L 12/27/1999	

FE Sent For: 12/27/1999. 

<END>

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See Attached *12/10 OK from Trent - do a /1*

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km 12/13 *JJ 12/13*

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MGD

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/?	nelsorp 1	/pl 12/3 WLJ	10/12/3	10/12/3 12/3			

FE Sent For:

<END>

counsel, unless good cause is shown for any additional requests. This number may not be expanded by the use of subparts to the interrogatories.

PURPOSE. There are two purposes. The first is to clear up the ambiguity as to whether the inmate may have 15 requests for each of the three discovery methods, for a total of 45, or whether the maximum for all three is 15. The second is to prevent increasing the permissible requests by adding defendants when the same legal counsel provides representation.

SECTION 6. Amend ss. 801.02(7)(d) and 814.29(1m)(c) as follows:

deny & request to proceed / 2
801.02(7)(d) If the prisoner seeks leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, the court shall dismiss any action or special proceeding, including a petition for a common law writ of certiorari, commenced by any prisoner if that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, sought leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, or brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was denied or was dismissed by a state or federal court for any of the reasons listed in s. 802.05 (3) (b) 1. to 4. The court may permit a prisoner to commence the action or special proceeding, notwithstanding this paragraph, if the court determines that the prisoner is in imminent danger of serious physical injury. *1m ok*

...

ok
814.29(1m)(c) Except when dismissal is required under s. 801.02 (7)(d), and unless the court determines that any of the conditions listed in s. 802.05(3)(b) 1. to 4. are present, the court shall issue an order permitting the prisoner to commence or defend an action, special proceeding, writ of error or appeal without the prepayment of fees or costs or **without** being required to give security for costs if all of the following conditions are met:

1. The court determines that the prisoner does not have assets or other means by which to pay the fees or costs or to give security for the costs after reviewing the information provided under par. (b).
2. The prisoner authorizes in writing the agency having custody of the prisoner's prison trust fund account to forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the fees or costs are paid in **full**.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3974/P1

RPN...f:....

WLI
3

D-Note

PRELIMINARY **DRAFT - NOT READY FOR INTRODUCTION**

Gen Cat

1 AN ACT ...; relating to: denial^g of prisoner's request⁷ to bring an action.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 801.02 (7) (d) ^J of the statutes is amended to read:

3 801.02 (7) (d) If the prisoner seeks leave to proceed without giving security for
4 costs or without the payment of any service or fee under s. 814.29, the court shall
5 ~~dismiss any deny the request to proceed in the~~ action or special proceeding, including
6 a petition for a common law writ of certiorari, ~~commenced by any prisoner~~ if that
7 prisoner has, on 3 or more prior occasions, while he or she was incarcerated,
8 imprisoned, confined or detained in a jail or prison, ~~brought done any of the following:~~

- 9 1. Brought an appeal, writ of error, action or special proceeding, including a
10 petition for a common law writ of certiorari, that was dismissed by a state or federal
11 court for any of the reasons listed in s. 802.05 (3) (b) 1. to 4.

1 ~~2. Sought leave to proceed without giving security for costs or without the~~
 2 ~~payment of any service or fee under s. 814.29 that was denied by a state or federal~~
 3 ~~court for any of the reasons listed in s. 802.05 (3) (b) 1. to 4.~~

4 (e) The court may permit a prisoner to commence the action or special
 5 proceeding, notwithstanding this paragraph (d), if the court determines that the
 6 prisoner is in imminent danger of serious physical injury.

7 History: Sup. Ct. Order, 67 Wk. 2d 585,589 (1975); 1975 c. 218; 1981 c. 289,317; 1995 a. 27; 1997 a. 133,187.

7 **SECTION 2. 814.29 (lm) (c) (intro.)** of the statutes is amended to read:

8 814.29 (lm) (c) (intro.) Except when ~~dismissal is required~~ the court denies the
 9 prisoner the right to proceed under s. 801.02 (7) (d) ~~or upon determining that any of~~
 10 the conditions under s. 802.05 (3) (b) 1. to 4. are present, the court shall issue an order
 11 permitting the prisoner to commence or defend an action, special proceeding, writ of
 12 error or appeal without the prepayment of fees or costs or without being required to
 13 give security for costs if all of the following conditions are met:

14 History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.29; 1981 c. 317; 1983 a 538; 1989 a. 31; Sup. Ct. Order No. 93-15.179 Wis. 2d xxxi; 1993 a. 490; 1995 a. 27,201; 1997 a. 133.

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3974/P1dn

RPN.../.....

WJ

Please review this draft carefully to ensure that it complies with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3974/P1dn
RPN:wlj:jf

December 3, 1999

Please review this draft carefully to ensure that it complies with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regan

1 AN ACT *to amend* 801.02 (7) (d) and 814.29 (1m) (c) (intro.) of the statutes;
2 relating to: denial of prisoner's request to bring an action.

Analysis by the Legislative Reference Bureau

Insert an

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 801.02 (7) (d) of the statutes is amended to read:
4 801.02 (7) (d) If the prisoner seeks leave to proceed without giving security for
5 costs or without the payment of any service or fee under s. 814.29, the court shall
6 ~~dismiss any~~ deny the request to proceed in the action or special proceeding, including
7 a petition for a common law writ of certiorari, ~~commenced by any prisoner~~ if that
8 prisoner has, on 3 or more prior occasions, while he or she was incarcerated,
9 imprisoned, confined or detained in a jail or prison, brought done any of the following:

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3974/lins
RPN:wlj:jf

insert ANL

Under current law, if a prisoner asks a court for permission to bring an action without the payment of any service or fee because of his or her indigent, the court may dismiss that request if the prisoner has, on ^{three} ~~3~~ or more occasions, while a prisoner ^{indigence} ~~indigent~~ brought an action that was dismissed because the action was frivolous. This bill ^{also} allows the court to deny the request to bring an action without the payment of any service or fee because of his or her ^{indigence} ~~indigent~~ if the prisoner has, on ~~3~~ or more occasions, while a prisoner, sought leave to bring an action without the payment of any service or fee because of his or her ^{indigence} ~~indigent~~ that was denied because the action was frivolous. These prohibitions do not apply if the court determines that the prisoner is in imminent danger of serious physical injury.

For further information see the state and **local** fiscal estimate, which will be printed as an appendix to this bill.

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 12/13/1999

To: Representative Goetsch

Relating to LRB drafting number: LRB-3974

Topic

Prisoner litigation, counting of frivolous petitions

Subject(s)

Courts - civil procedure

1. **JACKET** the draft for introduction _____



in the **Senate** or th e **A s s e m b l y** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____



If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-75 11

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