

1999 DRAFTING 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 requests for discovery

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>Reaired</u>
/1	nelsorp 1 12/02/1999	wjackson 12/03/1999	mclark 12/03/1999	_____	lrb_docadmin 12/03/1999	lrb_docadmin 1212711999	

FE Sent For:

<END>

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<END>

c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction *or* a sentence of a court or an action under s. 809.30, **809.40, 973.19** or 974.06.

d. A person bringing an action under s. 809.50 seeking relief from an **order** or judgment not appealable as of right **that was** entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.

e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 5 1 or 55 or s. 971.14 (2) or (5).

PURPOSE: To protect the holdings in *State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582-83, 592 N.W.2d 307 (Ct. App. 1999) (*per curium*), and *State ex rel. Stinson v. Morgan*, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999) (*per curium*).

SECTION 4. Amend s. 801.02(7)(b) as follows:

(b) No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has-been incarcerated, imprisoned or detained, including a decision to transfer (an inmate) to another institution, whether publicly or privately owned and whether within this state or without this state, and including a proceeding before a judge, until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

ok

PURPOSE. There are two purposes. One is to reverse a Dane County Circuit Court decision that there is no duty to exhaust administrative remedies as to a decision to transfer an inmate to another institution. The second is to reach proceedings that are not before a court, such as a John Doe proceeding before a judge under s. 968.26.

SECTION 5. Amend s. **804.015(4)** as follows:

(4) If a prisoner commences an action or special proceeding, the court shall limit the number of requests for interrogatories, production of documents or admissions to a cumulative total of 15 for all defendants represented by the same

ok

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:

... 7 requests ...
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. 814.19, 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. *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.



D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cat

1 ~~AN ACT~~ *Gen Cat* relating to: limits on discovery requests in cases involving prisoner
2 litigation.

Analysis by the Legislative Reference Bureau

Under current law, in an action or proceeding brought by a prisoner, the court is required to limit the number of requests for interrogatories, production of documents or admissions to 15, unless good cause is shown for additional requests. This bill provides that the limit in these cases on the number of requests for interrogatories, production of documents or admissions is a cumulative total of 15 from all of the defendants who are represented by the same attorney.

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

3 SECTION 1. 804.015 (4)[↓] of the statutes is amended to read:
4 804.015 (4) If a prisoner commences an action or special proceeding, the court
5 shall limit the number of requests for interrogatories, production of documents or
6 admissions to a cumulative total of 15 from all of the defendants in the action or
7 proceeding: who are represented by the same attorney, unless good cause is shown for

1 any additional requests. This number may not be expanded by the use of subparts
2 to the interrogatories.

3 History: 1997 a. 133.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to actions or proceedings commenced on the effective
5 date of this subsection.

6 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3975/7dn
RPN.....

Wlj

I added language to clarify that the limit applies to all defendants in the action or proceedings⁹ who are represented by the same attorney I used the term "attorney" instead of "counsel" because "attorney" is used in that section of the statutes, but "counsel" is not. I also added an initial applicability section.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3975/1dn
RPN:wlj:mrc

December 3, 1999

I added language to clarify that the limit applies to all defendants in the action or proceeding who are represented by the same attorney. I used the term "attorney" instead of "counsel" because "attorney" is used in that section of the statutes, but "counsel" is not. I also added an initial applicability section.

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

**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: 12/03/1999

To: Representative Goetsch

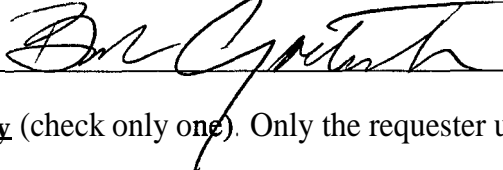
Relating to LRB drafting number: LRB-3975

Topic

Prisoner litigation, counting of requests for discovery

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 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

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

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