

SUPREME COURT OF WISCONSIN

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In the Matter of the Amendment of  
Supreme Court Rules: (Proposed)  
SCR 70.40 -- Venue in Prisoner Cases

ORDER  
No. 96-14

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The court held a public hearing April 15, 1997 on the petition of the Committee of Chief Judges requesting the creation of a rule of court administration to establish a procedure by which the most appropriate venue in prisoner conditions of confinement and grievance proceedings would be determined by the court to which the proceeding is submitted and if an evidentiary hearing is deemed likely to be required and a county other than where the proceeding was submitted appears more convenient for the parties and witnesses at that hearing, the court where the proceeding was submitted would send the case to the circuit court in the more convenient county. Pursuant to the proposed procedure, if the proceeding is sent to the court in another county, that court would determine the indigency of the prisoner and decide whether it states a claim upon which the court may grant relief.

The court has considered the petition, the presentation at the public hearing, and the materials filed with the court thereafter.

IT IS ORDERED that, effective the date of this order, SCR 70.40 is created to read:

**SCR 70.40 Venue in incarcerated person cases.**

(1) The clerk of circuit court shall use the incarcerated person case type designation to identify pleadings and papers submitted by any jail or prison inmate seeking to commence, prosecute or defend an action or proceeding under section 814.29(1) of the statutes if the pleadings and papers submitted appear to deal with the fact, duration or conditions of imprisonment or with other confinement matters not including criminal postjudgment issues related to conviction. The incarcerated person case designation is not intended to replace family, criminal or civil case type designations when those designations are appropriate.

(2) When pleadings and papers are designated an incarcerated person case, the court shall determine all of the following, based on the pleadings and papers submitted, in the following order:

(a) Whether the venue where the pleadings and papers are submitted is proper.

(b) Whether venue is also proper in another county.

(c) Whether an evidentiary hearing is likely to be needed.

(d) Whether another county where venue is proper is more convenient for the parties and the witnesses.

(3) If sub. (2) (b), (c) and (d) are all answered in the affirmative, the court on its own motion shall change venue to the more convenient county under section 801.52 of

the statutes. The clerk of the circuit court shall forward the case to the clerk of circuit court in the more convenient county and shall give notice of that action to the parties. The court to which the case is forwarded shall determine indigency and whether the case presents a claim upon which the court may grant relief and shall issue an appropriate order under section 814.29(1) of the statutes.

**(4)** If the court to which the case is forwarded under sub. (3) believes an error has been made in the determination that venue is proper in that court, the court shall refer the matter to the chief judge of the district in which that court is located to resolve the matter.

**(5)** If the court to which the pleadings and papers are submitted or the court to which the case is forwarded determines that the case has merit and states a claim, defense or appeal upon which the court may grant relief, resolves any issues related to indigency or filing fees and orders the case commenced under section 814.29(1) of the statutes, the incarcerated person case shall be assigned a civil case type designation and number and shall proceed before the assigned judge.

IT IS FURTHER ORDERED that notice of this amendment of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state

newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 2nd day of July, 1997.

BY THE COURT:

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Cornelia G. Clark  
Chief Deputy Clerk