

FILED

OCT 7, 1999

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

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

ORDER
No. 99-02

The court held a public hearing September 28, 1999, on the petition of the Committee of Chief Judges and District Court Administrators requesting amendment of SCR 70.40, governing venue in cases brought by incarcerated persons to conform that rule to applicable revisions of the statutes. The court has considered the presentation made at that public hearing.

IT IS ORDERED that, effective the date of this order, 70.40 of the Supreme Court Rules is amended as follows:

SECTION 1. 70.40 (title) and (1) of the supreme court rules are amended to read:

SCR 70.40 (title) Venue in ~~incarcerated person~~ prisoner cases.

(1) The clerk of circuit court shall use the "IP" (incarcerated person) case type designation to identify pleadings and papers submitted by any ~~jail or prison inmate prisoner~~, as defined in s. 801.02 (7) (a) 2., stats., seeking to commence, prosecute or defend an action or proceeding under section s. 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 (1m), stats., without the prepayment of costs and fees.~~

(1m) The incarcerated person case designation is not intended to replace clerk of circuit court shall use the family, criminal or civil case type designations when those designations are appropriate and applicable costs and fees are prepaid. The case type designation for any case designated "IP" under sub. (1) shall be changed to and proceed under the appropriate civil case designation whenever a court orders the case commenced under s. 814.29 (1m), stats., without the prepayment of costs and fees.

SECTION 2. 70.40(2) (intro.) of the supreme court rules is amended to read:

70.40(2) (intro.) ~~When pleadings and papers are designated an incarcerated person case, the~~ The court shall determine ~~all as much~~ of the following as is necessary, based on the pleadings and papers submitted by a prisoner, in the following order:

SECTION 3. 70.40 (2) (a) to (d) of the supreme court rules are renumbered 70.40 (2) (g) to (j).

SECTION 4. 70.40 (2) (am), (bm), (cm), (dm), (em) and (fm) of the supreme court rules are created to read:

70.40(2) (am) Whether all required documentation has been submitted.

(bm) Whether all available administrative remedies have been exhausted.

(cm) Whether the prisoner is precluded from filing without the prepayment of costs and fees under s. 801.02 (7) (d), stats.

(dm) Whether the prisoner is indigent.

(em) In what manner the filing fees and costs are to be paid.

(fm) Whether the case should be dismissed without requiring the defendant to answer for a reason set forth in s. 802.05 (3) (b), stats.

SECTION 5. 70.40(3) of the supreme court rules is amended to read:

70.40(3) If sub. (2) ~~(b), (c) and (d)~~ (h), (i) and (j) are all answered in the affirmative, the court on its own motion shall change venue to the more convenient county under ~~section s. 801.52 of the statutes~~ , stats. 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~~ Any order changing venue shall direct payment of costs and fees to the county to which venue is transferred.

SECTION 6. 70.40(4) of the supreme court rules is amended to read:

70.40(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~~ that court shall refer

the matter to the chief judge of the district in which that court is located to resolve the matter.

SECTION 7. 70.40(5) of the supreme court rules is repealed.

IT IS FURTHER ORDERED that notice of this amendment of the supreme court rules 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 7th day of October, 1999.

BY THE COURT:

Marilyn L. Graves,
Clerk of Court