

# PRISONERS' GUIDE TO THE INMATE COMPLAINT REVIEW SYSTEM

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# **PRISONERS' GUIDE TO THE INMATE COMPLAINT REVIEW SYSTEM (ICRS)**

## **Outline of this Manual**

I.	Introduction .....	5
II.	The Inmate Complaint Review System (ICRS) .....	7
	A. Introduction .....	7
	B. Subjects That You Can Raise in the ICRS .....	7
	C. Steps in the ICRS .....	8
	1. Complaint to the "Institution Complaint Examiner" (ICE).....	9
	2. Appeal to the "Appropriate Reviewing Authority" (ARA).....	11
	3. Appeal to the "Corrections Complaint Examiner" (CCE) .....	11
	4. Decision of the DOC Secretary .....	12
	D. Checklist/Timeline for Inmate Complaints .....	12
	E. Is the ICRS Confidential?.....	13
III.	Judicial Review of Decisions on Your Inmate Complaint .....	15
	A. An Overview of Certiorari Review .....	15
	1. Certiorari Process .....	15
	2. Evidence in a Certiorari Proceeding.....	16
	3. Limits on Judge's Review in a Certiorari Proceeding .....	16
	B. The Prisoner Litigation Reform Act (PLRA) .....	18
	1. Overview of the PLRA.....	18
	2. Specific Requirements of the PLRA .....	18
	3. Avoiding the Requirements of the PLRA .....	20
	C. Procedural Requirements for Certiorari Petitions.....	21
	1. Where to File (Venue).....	21
	2. When to File .....	21

D.	Forms and Instructions for Pleadings .....	23
1.	General Instructions .....	23
2.	PLRA Forms and Instructions.....	24
3.	The Certiorari Petition.....	26
4.	The Proposed Writ of Certiorari.....	29
5.	Other Documents to Send with Your Certiorari Forms .....	29
6.	Checklist of Documents to Send to Court.....	30
E.	The Judge's Initial Rulings .....	31
F.	What to Do with the Papers the Court Sends You .....	31
G.	What Happens Next?.....	32
IV.	Conclusion.....	35
V.	Sample Forms for Filing a Certiorari Petition.....	36

# PRISONERS' GUIDE TO THE INMATE COMPLAINT REVIEW SYSTEM (ICRS)

## I. INTRODUCTION

This manual has two purposes. First, this manual explains how the Department of Corrections' Inmate Complaint Review System (ICRS) works.

Second, this manual explains how you can get into court to have the court review a decision by the Department of Corrections (DOC) on your inmate complaint. In order to get a judge to review a DOC decision, you must file a **petition for writ of certiorari**, also known as a "certiorari petition."

The Frank J. Remington Center's LAIP project does not assist inmates in raising "conditions of confinement" challenges through the ICRS. Furthermore, there are very few lawyers who are available or willing to help prisoners obtain judicial review of these DOC decisions.

Therefore, this manual is designed to help inmates obtain court review without the help of a lawyer. It includes forms for you to use if you decide to proceed to court. We suggest that you read this entire manual before filing a certiorari petition.

This manual is designed for inmate complaints about anything except prison disciplinary decisions. Challenges to prison discipline are not addressed in this manual. If you want to challenge a prison disciplinary decision, please refer to the *Prisoners' Guide to Prison Discipline*, also in Chapter 7 of the *LAIP Desk Book*.

If you do proceed to court, remember that in doing any legal work, it is very important to do careful and thorough work in preparing papers for a court. Unfortunately, courts generally do not view prisoners who represent themselves as having the same credibility as lawyers. If you make a careful and thorough presentation, you will have a better chance of getting an unbiased review of your complaint by the court.

**A WARNING:** The forms provided here, especially the form for the certiorari petition, must be tailored to your individual case. **You will need to modify the forms to include the specific facts and legal issues in your case.**

In addition, Wisconsin law requires that motions must "state *with particularity* the grounds therefor and . . . set forth the relief or order sought." Wis. Stat. § 802.01(2)(a) (emphasis added). This means that **you will have to be specific about exactly why you think you are entitled to relief, and tell the court exactly what kind of relief you want.**

Furthermore, the court forms provided in this manual do not include all the possible motions or other forms you could use in asking a court to review a DOC decision. Even the careful use of these forms will not guarantee that a court will decide in your favor on the merits.

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**These forms are intended only to be a guide in pursuing your own case.** It is impossible to anticipate all of the variations in all cases. Therefore, you must do your own reading of the law to be sure you are correctly following procedure.

If, after reading this manual, you still have a procedural question about filing a certiorari petition in the Dane County Circuit Court, you can write to:

Prisoner Litigation Staff Attorney  
Dane County Circuit Court  
215 South Hamilton Street  
Madison, WI 53703

The circuit court's Prisoner Litigation Staff Attorney may be able to provide you with information about filing a certiorari petition. **However, the Staff Attorney can provide information only on procedures, not on the legal issues raised in your certiorari petition.**

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## **II. THE INMATE COMPLAINT REVIEW SYSTEM (ICRS)**

### **A. Introduction**

The DOC has established the Inmate Complaint Review System (ICRS) to address complaints by inmates. The ICRS procedures are in Chapter 310 of the Department of Corrections (DOC) Administrative Code. If your administrative complaint is not successful, you may challenge the DOC decision on your complaint in circuit court by filing a petition for writ of certiorari.

This manual cites to chapters or sections of the Administrative Code as "Ch. DOC \_\_" or "§ DOC \_\_." You should have access to the Administrative Code in your prison law library.

### **B. Subjects That You Can Raise in the ICRS**

The ICRS does not cover every type of complaint possible in the prison system, although it covers a lot. Section DOC 310.08 outlines what kinds of complaints can be raised in the ICRS, and when they can be raised.

The ICRS can be used to try to raise significant complaints about the following issues:

- Prison rules;
- Prison living conditions;
- Staff actions affecting institution environment;
- Civil rights complaints.

§ DOC 310.08(1).

The ICRS cannot be used to challenge the merits of the following kinds of decisions:

- Disciplinary decisions;
- A decision of the Program Review Committee (PRC);
- A decision of the Earned Release Review Commission (ERRC)/Parole Commission;
- Contents of an inmate's institution record, including a Presentence Investigation Report (PSI);
- The denial of a request for authorized leave under § DOC 326;
- The denial of an open records request.

§ DOC 310.08(2).

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Appeals for these other kinds of proceedings can be found in the following sections of the Administrative Code:

- Disciplinary decisions: §§ DOC 303.77, 303.80
- Appeals of PRC decisions: § DOC 302.18
- Appeals of administrative confinement decisions: § DOC 308.04(9)
- Appeals of denials of requests for authorized leave: § DOC 326.06

These separate appeal procedures are outside the scope of the ICRS, and are beyond the scope of this manual.

However, under § DOC 310.08(3), you can use the ICRS to challenge procedural errors made regarding disciplinary hearings, program review committee proceedings, or a denial of a request for authorized leave. *See, e.g., State ex rel. Smith v. McCaughtry*, 222 Wis. 2d 68, 586 N.W.2d 63 (Ct. App. 1998) (abrogated on other grounds, *State ex rel. Hensley v. Endicott*, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686); *State ex rel. Frasch v. Cooke*, 224 Wis.2d 791, 592 N.W.2d 304 (Ct. App. 1999).

**But remember that the ICRS allows only a procedural challenge of the kinds of decisions listed in the previous paragraph. You cannot challenge the substance (merits) of these kinds of decisions through the ICRS.**

Furthermore, you cannot use the ICRS to raise a procedural challenge to these proceedings until after you have exhausted your administrative appeal process for each proceeding. § DOC 310.08(3).

In particular, if you want to appeal the merits and/or procedure involved in a disciplinary decision, you should read a separate manual, the *Prisoners' Guide to Prison Discipline*, in Chapter 7 of the *LAIP Desk Book*.

### **C. Steps in the ICRS**

The ICRS sets up a strict series of steps and deadlines to address an inmate complaint. It is important that you follow this procedure exactly.

Remember that you **cannot file more than one complaint through the ICRS for a single concern**. So it is important to make sure that your complaint is clear, specific, and well-documented.

In addition, if there are **documents that you want to have included in the record for any**

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**future judicial review of the matter, be sure to include these documents with your inmate complaint from the very beginning.**

Finally, as you review the steps in the ICRS, it is important to understand the difference between "calendar days" and "working days." The term "calendar days" refers to days in the ordinary way--that is, each day is a new calendar day. However, the term "working days" refers to all days except Saturdays, Sundays, and legal holidays. § DOC 310.03(18).

***1. Complaint to the Institution Complaint Examiner (ICE)***

The procedure for ICRS is explained in §§ DOC 310.07-14. The first step is to file a complaint with the "institution complaint examiner" (ICE). The rules governing complaints to the ICE are laid out in §§ DOC 310.09, 310.10, and 310.11.

Under § DOC 310.09(2), you cannot file more than 2 *complaints* per calendar week.

Under § DOC 310.09(6), **your complaint must be filed within 14 calendar days of the event that you are complaining about**, unless the ICE waives that limitation.

You can file the complaint either by putting it in a locked box designated for complaints, or by putting it in a sealed envelope in the institution mail system, marked for delivery to the office of the ICE. § DOC 310.09(8).

If you are transferred to another institution after the incident that gave rise to the complaint, but before you file the complaint, you can file it at your new prison. The complaint will be sent back to the ICE at your old prison. § DOC 310.11(9).

The ICE is a staff person at the prison. The ICE is supposed to collect complaints, assign a file number to each complaint, then review and acknowledge each complaint within **5 working days** of receiving it.

Practically speaking, depending on the volume, there can be delays in this process. In particular, the ICE is required to give priority to complaints concerning health and personal safety. § DOC 310.11(3). That may slow down the process of handling non-priority complaints.

Either an individual inmate or a group of inmates can file a complaint. §§ DOC 310.09(1), 310.10. Although group complaints filed under § DOC 310.10 are allowed, group resistance and petitions are prohibited under § DOC 303.24(2).

Section DOC 310.09 lists rules for the form and processing of an inmate complaint:

- You must file the complaint on the form provided by the institution for that purpose.

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- You must sign the form with the name under which you were committed to the DOC, or your legal name if you have had a name change.
- Each complaint must contain only one issue, which must be clearly identified.
- The complaint may not contain abusive, obscene, or threatening language, unless such language is necessary to describe the basis for the complaint (for example, if you are describing what someone else said to you)

If your complaint does not comply with the limitations listed above, the ICE **must** return it without processing it. § DOC 310.09(3).

Upon receiving the complaint, the ICE is supposed to investigate it in the way that he or she thinks is best to determine the facts. Within **20 working days** of the date of acknowledging the complaint, the ICE must take action on the complaint. The ICE can either reject the complaint or address it on its merits. If the ICE addresses the merits of the complaint, the ICE will make a recommendation to the "Appropriate Reviewing Authority." § DOC 310.11(11).

**The ICE has the authority to reject a complaint, without deciding on its merits, for any of the following reasons:**

- It was submitted solely to harass or cause malicious injury to a DOC employee;
- It does not raise a significant issue about rules, living conditions, or staff actions;
- It does not allege enough facts about the basis of the complaint;
- It was submitted more than 14 days after the event, and the ICE does not find good cause to extend that deadline;
- It does not personally affect the inmate;
- It is moot;
- It has already been addressed through the inmate's prior use of the ICRS; or
- It is not within the scope of the ICRS.

§ DOC 310.11(5).

If the ICE rejects your complaint without a decision on the merits, you can appeal it to the "Appropriate Reviewing Authority" (ARA) within **10 calendar days**. If the ARA rejects your appeal, its decision on the rejection is final. § DOC 310.11(6). This means that you cannot appeal the ARA's decision to the Corrections Complaint Examiner, as outlined in Subsection 3, below. It also means that you will **not** have a legal basis to challenge the rejection in a

certiorari petition later on.

**Therefore, we recommend that you avoid the grounds for rejection listed under § DOC 310.11(5), so that your complaint will be considered on its merits.**

If the ICE decides the merits of the complaint, the ICE must write a report recommending a disposition of the complaint to the ARA. § DOC 310.11(11).

**2. Appeal to the "Appropriate Reviewing Authority" (ARA)**

Under the Administrative Code, the term "Appropriate Reviewing Authority" (ARA) refers to the warden, bureau director, administrator, or any other person who is authorized to review and decide an inmate complaint.

Within **10 working days** of receiving the ICE's report, the ARA must make a decision on the complaint or else return it to the ICE for further investigation. § DOC 310.12

If the ARA does make a decision on the complaint, the ARA can affirm the complaint, dismiss the complaint, or affirm or dismiss the complaint with modifications. § DOC 310.12(2). If you do not receive the ARA's decision within **30 working days** of receiving the ICE's acknowledgment of the complaint, the complaint is deemed to be denied. § DOC 310.12(3).

If you disagree with the ARA's decision, or if it was deemed denied, you can appeal the decision to the Corrections Complaint Examiner (CCE).

**3. Appeal to the Corrections Complaint Examiner (CCE)**

If you are not satisfied with the ARA's decision on your complaint, you can file an appeal with the Corrections Complaint Examiner (CCE). The CCE is a DOC employee who does not work in the Division of Adult Institutions (the DOC administrative unit that is responsible for the prisons). § DOC 310.03(5).

There are rules about processing the appeal. You must file your appeal within **10 calendar days** of receiving the ARA's decision (if you didn't receive a decision from the ARA, **within 30 working days of the ICE's acknowledgment**). § DOC 310.12(3). Sometimes the CCE will accept a late appeal, but you should make every effort to get it in on time. § DOC 310.13(2). File your appeal in a sealed envelope for confidentiality.

The CCE should acknowledge receipt of your appeal within **5 working days** after receiving it. § DOC 310.13(4). The CCE can use any necessary investigatory method in order to make a recommendation about the appeal. § DOC 310.13(5).

The CCE doesn't actually make the decision on the appeal. Rather, the CCE makes a recommendation to the Secretary of the Department of Corrections. Along with the recommendation, the CCE will send the complaint file to the Secretary so that the Secretary can

make his or her decision on the appeal.

Within **35 working days** of receiving the appeal, the CCE is supposed to make a written recommendation to the Secretary. § DOC 310.13(6). However, as a practical matter, a backlog may slow this process. In particular, the CCE is required to give priority to complaints involving health or personal safety. § DOC 310.13(5).

#### **4. Decision of the DOC Secretary**

The DOC Secretary has four choices on appeal. The Secretary can:

- Accept the recommendation of the CCE and adopt it as the decision;
- Adopt the recommendation of the CCE with modifications;
- Reject the recommendation of the CCE and make a different decision on the appeal; or
- Return the appeal to the CCE for additional investigation.

§ DOC 310.14(2).

The Secretary is supposed to make the decision within **10 working days** of receiving the CCE's recommendation, but can extend that deadline for good cause and after giving you notice. § DOC 310.14(1).

If you do not receive a written decision from the Secretary within **45 working days** after the CCE acknowledged receiving your appeal, the appeal is deemed to be denied, unless the Secretary extended the 10-day deadline for deciding on the CCE's recommendation. § DOC 310.14(3).

The DOC Secretary is the final step in the administrative process of the ICRS. Once the Secretary makes a decision on the appeal, or the appeal has been deemed denied by the Secretary, you have exhausted all of the administrative remedies available to you.

**Remember that you cannot file more than one complaint through the ICRS for a single concern.**

At that point, you may take the case to court on a petition for writ of certiorari, if you choose.

#### **D. Checklist /Timeline for Inmate Complaints**

- 1) You must file your complaint with the ICE within **14 calendar days** of the incident/issue you are complaining about.

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- 2) The ICE should acknowledge your complaint within **5 working days** of receiving it.
- 3) The ICE must take action on the complaint within **20 working days**.
  - a) If the ICE dismisses your complaint without a decision on the merits, you have **10 calendar days** to appeal to the ARA.
  - b) If the ICE addresses the merits of your complaint, the ICE will make a recommendation to the ARA.
- 4) Within **10 working days** of receiving the ICE's recommendation, the ARA must make a decision on the complaint or else return it to the ICE.
- 5) If you do not receive the ARA's decision within **30 working days** after you received the ICE's acknowledgment, your complaint is deemed to be denied.
- 6) Assuming that the ARA addressed the merits of your complaint under # 3(b), above, you can appeal the ARA's action to the CCE within **10 calendar days** after you received it.
- 7) The CCE should send you an acknowledgment within **5 working days** of receiving it.
- 8) The CCE should make a recommendation to the DOC Secretary within **35 working days** of receiving your appeal.
- 9) The DOC Secretary should decide on the CCE's recommendation within **10 working days** of receiving the CCE's recommendation. However, the Secretary can extend that deadline for good cause.
- 10) If you do not receive a written decision from the Secretary within **45 working days** after the CCE acknowledged receiving your appeal, the appeal is deemed to be denied, unless the Secretary has extended the 10-day deadline to decide on the CCE's recommendation.
- 11) You must file a certiorari petition within **45 calendar days** of the date your complaint was finally denied or deemed denied by the Secretary.

#### **E. Is the ICRS Confidential?**

The ICRS is supposed to be confidential. Section DOC 310.16(1) states that, "except as otherwise provided in this section," complaints filed in the ICRS shall be confidential. The identity of the person complaining and the nature of the complaint are supposed to be revealed only to the extent necessary for the DOC to thoroughly investigate the complaint and implement a remedy.

The ARA can waive confidentiality if the security of the institution, staff, or inmates is

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involved. § DOC 310.16(2). Furthermore, if you "make known any aspect of a complaint," outside of the ICRS, then you are considered to have waived confidentiality. § DOC 310.16(5).

Another concern involves the issue of lying about staff. The rule against lying about staff, § DOC 303.32, appears to apply only to false statements made "outside the complaint review system."

However, the Appendix to § DOC 310.16, which deals with the confidentiality of the complaint system, states that "[t]his rule does not prohibit disciplinary action for the bad faith use, or rather abuse, of the ICRS under DOC 303.32."

So be careful about what you say in your complaint, and be particularly careful about what you repeat outside of the ICRS.

Furthermore, although the Administrative Code is vague on the subject, it is possible that other misconduct in the context of filing a complaint could give rise to discipline. For example, a threat against staff in the context of a complaint could possibly give rise to discipline.

In short, **it is not safe to assume that you can write anything you want in a complaint.** Your statements could form the basis for discipline, so it is best to use some care in the wording of your complaint.

More importantly, you want to keep in mind that if you do eventually file a certiorari petition about the complaint, the court will review only the written record provided through the ICRS. So it is important that your written complaint and administrative appeal be as clear, objective, and professional looking as possible.

### **III. JUDICIAL REVIEW OF DECISIONS ON YOUR INMATE COMPLAINT**

If your ICRS complaint has been denied, you can seek judicial (court) review of the denial by filing a **petition for writ of certiorari**. In this manual, this is called a “certiorari petition.”

Certiorari review by a court is available to people who want to challenge a decision that affects them, made by an administrative agency. The DOC is an administrative agency, so certiorari is available to ask a court to review a decision made in the ICRS.

Certiorari review is also used by prisoners who wish to challenge their revocation or prison discipline. The *LAIP Desk Book* includes two other manuals like this one, the “Prisoner's Guide to Challenging Revocation by Certiorari” and the “Prisoners' Guide to Prison Discipline,” both in Chapter 7, which explain how to request certiorari review of these other issues.

#### **A. An Overview of Certiorari Review**

##### **I. Certiorari Process**

In a certiorari proceeding, the petitioner (you) files a certiorari petition against the respondent in Dane County Circuit Court. When you are challenging a decision through the ICRS, the respondent is the DOC Secretary.

Do not list the warden as the respondent instead of the DOC Secretary. If you do, your petition will be dismissed. *See State ex rel. Myers v. Smith*, 2009 WI App 49, 316 Wis. 2d 722, 766 N.W.2d 764.

In the certiorari petition, you state why you believe the DOC Secretary was wrong in his or her decision about your inmate complaint.

After receiving the petition, the judge can then issue a writ of certiorari to the respondent.

The fact that the judge issues the writ does not mean that you have won the case. Rather, **by issuing the writ, the judge is simply ordering the respondent to prepare a return in the case and present it to the court**. The "return" is a set of documents that includes the official, written, administrative record (paperwork) regarding your inmate complaint.

Once the court receives the return, the court will review this written record to see whether the respondent's decision in the case should stand.

Sometimes the parties are given an opportunity to file briefs explaining why the written record supports their argument that they should win.

Usually there is **no court hearing** in a certiorari proceeding. Rather, the judge makes a decision based on the petition and return (the written record) and on the parties' briefs.

The judge can affirm, reverse, or modify the DOC decision on the inmate complaint.

## 2. *Evidence in a Certiorari Proceeding*

It is extremely important to understand that the **court's review in a certiorari proceeding is limited to review of the written record of the inmate complaint and appeal**. The court will not consider any evidence or facts outside of the record that was developed during the ICRS process.

In other words, the court will not allow you to present new or additional facts, either orally or in writing, during certiorari review. There will not be any evidentiary hearing that would allow you to present new evidence in your favor.

The written record in the certiorari proceeding will usually consist of at least the following documents:

- Your inmate complaint;
- The Institution Complaint Examiner's (ICE's) receipt;
- The ICE's report and recommendation;
- The "Appropriate Reviewing Authority's" decision on the complaint (if any);
- Your appeal to the Corrections Complaint Examiner (CCE);
- The CCE's receipt;
- The report and recommendation of the CCE; and
- The decision (if any) of the Secretary of the DOC.

There may be additional documents in the record (for example, documents that were included as part of the investigation of the complaint). **If you want to be sure that a document is included in the ICRS record, you should attach it, if possible, to your inmate complaint at the time you submit it to the ICE.**

## 3. *Limits on Judge's Review in a Certiorari Proceeding*

A reviewing court has a very limited scope of review in a certiorari case. *State ex rel. Griffin v. Smith*, 2004 WI 36, ¶ 14, n. 4, 270 Wis. 2d 235, 677 N.W.2d 259.

The court's authority is limited to determining:

- 1) Whether the DOC kept within its jurisdiction.

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- 2) Whether the DOC Secretary acted according to law in making the decision. This includes whether the state or federal constitution, state statutes, and the Wisconsin Administrative Code rules were violated.
- 3) Whether the Secretary's decision was arbitrary, oppressive or unreasonable and represented the agency's will rather than its judgment. The Secretary is supposed to reach a reasonable decision based on the evidence presented. This is similar to the next point.
- 4) Whether, based on the evidence, the Secretary could reasonably have decided as he or she did. This is definitely an uphill battle for the petitioner (you). **Courts will not substitute their judgment of evidence for the judgment made by the Secretary.** This is because courts do not like to second-guess decisions made by people whom they perceive as experts in a given area.

In general, courts are reluctant to review the substance of the decision of an administrative agency. They generally will not reverse findings of fact, including those involving witness credibility. The courts also will not re-weigh the sufficiency of the evidence to support the decision.

On the other hand, courts have sometimes vacated or reversed decisions for which no credible evidence appeared in the record. Courts may also grant certiorari relief when there has been some procedural error that has deprived the inmate of a fair shot in the ICRS.

Nevertheless, it is important to understand that **the remedy in certiorari is extremely limited.** Generally, the remedy should only give you what you would have had if the incident giving rise to the complaint had never happened.

A common example is a successful complaint for lost property. You might be entitled to new property, or to be reimbursed for the value of the lost property. But you would not be entitled to additional damages for pain and suffering. *See Coleman v. Percy*, 86 Wis. 2d 336, 341, 272 N.W.2d 118 (Ct. App. 1978), *aff'd*, 96 Wis. 2d 578, 292 N.W.2d 615 (1980).

Finally, **a court cannot award money damages in a certiorari proceeding.** *See Percy*, 86 Wis. 2d at 341.

If you believe that you have valid grounds for a successful court challenge to the decision on your inmate complaint, the remainder of this manual will help you secure judicial review by certiorari if you are proceeding *pro se* (on your own).

The information and suggested forms in this manual should help you get your action properly filed in the proper court. However, you should remember that you may have to do additional legal research to write a convincing certiorari petition, as well as any brief you might submit on the merits of your claim.

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## **B. The Prisoner Litigation Reform Act (PLRA)**

### **1. Overview of the PLRA**

Beginning in 1998, the Prisoner Litigation Reform Act (PLRA) created a procedure that applies only to Wisconsin prisoners who start civil cases. *See* Wis. Stat. §§ 801.02(7), 802.05(3), 807.15, 814.29, and 893.735.

The PLRA applies to certiorari challenges to DOC decisions on inmate complaints or disciplinary issues, and to decisions of the Division of Hearings and Appeals on revocations. The PLRA also applies to habeas corpus suits challenging DOC sentence calculations. *See, e.g., State ex rel. Stinson v. Morgan*, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999).

The PLRA includes some procedural requirements that you must meet if you want a court to consider your certiorari petition.

- **The PLRA imposes a strict 45-day deadline.** Wis. Stat. § 893.735. This means that your certiorari petition must be filed within 45 calendar days of the final decision by the DOC on your complaint.
- **Exhaustion Requirement.** You will also have to provide documents showing that you have exhausted your administrative remedies. Wis. Stat. § 801.02(7)(b) and (c).
- **The PLRA's fee requirements** mean that you can get waiver of payment of filing fees and costs, but the fees and costs will be taken back out of your prison accounts, and the accounts must be frozen until the fees and costs are paid in full. Wis. Stat. § 814.29(1m).
- **"Three Strikes Rule":** This rule states that you cannot use the fee-waiver provisions of the PLRA if you have had three or more civil cases dismissed for being frivolous or malicious. Wis. Stat. § 801.02(7)(d).
- **Penalty for filing a malicious action:** If a court finds that your case was filed maliciously or to harass the opposing party, your release date can be extended. Wis. Stat. § 807.15.

Each of these rules is discussed in greater detail below.

### **2. Specific Requirements of the PLRA**

#### **a. 45-Day Statute of Limitations, Wis. Stat. § 893.735**

Your certiorari petition must be filed within **45 calendar days** of the DOC's final decision on your complaint. If your petition is not filed in time, it will be dismissed. Details about the 45-day filing deadline will be discussed in greater detail in Subsection C, "Procedural Requirements for Certiorari Petitions," below.

*b. Exhaustion Requirement*

Along with your affidavit of indigency, **you must include documentation to prove that you have exhausted your administrative remedies**, as discussed in Section II of this manual. As explained in Section II, above, this means that you will need to prove that you pursued your complaint up to the level of the DOC Secretary.

*c. Fee Requirements*

Under the PLRA, **prepayment of filing fees and costs can be waived** if you file an affidavit of indigency. However, **the fees and costs will be paid back to the court out of your prison accounts**. Wis. Stat. § 814.29(1m)(b). As of 2016, the filing fee for a certiorari petition is **\$129.50**.

The PLRA allows prisoners to start civil cases without paying the filing fees up front. In other words, the PLRA allows courts to waive prepayment of fees and costs. However, under the PLRA, the costs of filing and serving the civil action must then be deducted from the inmate's prison accounts, and the accounts must be frozen until the fees and costs are paid in full.

Both your regular institution and your release accounts are subject to being frozen until the fees and costs are paid in full. See *Spence v. Cooke*, 222 Wis. 2d 530, 587 N.W.2d 904 (Ct. App. 1998); *State ex rel. Akbar v. Kronzer*, 2004 WI App 108, 273 Wis. 2d 749, 680 N.W.2d 280.

You can expect that fees and costs will first be deducted out of your regular institution account. When that account is depleted, the remainder of the fees/costs will be deducted from your release account.

In addition to requiring you to pay back circuit court filing fees from your inmate accounts, the PLRA also requires you to **pay back service fees and any other costs**. *Id.*

If the circuit court denies your petition and you appeal to the court of appeals, **you will also have to pay back appellate filing fees and costs**. Wis. Stat. § 814.29(1m)(b).

*d. "Three Strikes" Rule*

The PLRA's "three strikes" rule may apply to you if you have had previous civil actions (cases) dismissed. Under this rule, **if you ask for waiver of prepayment, a court will dismiss your petition** if you have already had three or more actions dismissed in the past, for any of the following reasons:

- The action was legally frivolous or failed to state a legal claim;
- You sought damages against a party who was immune from suit; or
- The action was filed for an improper purpose, such as to harass, delay, or increase the costs of litigation.

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*See* Wis. Stat. § 801.02(7)(d).

In order to qualify as a "strike" under Wis. Stat. § 801.02(7)(d), the prior case must have been entirely dismissed for the reasons outlined in the statute. *See State ex rel. Henderson v. Raemisch*, 2010 WI App 114, 329 Wis. 2d 109, 790 N.W.2d 242.

**There are a few limited exceptions to the "three strikes" rule.** First, if your certification from the Department of Justice says that you have had three or more such dismissals in the past, and you think this information is wrong, you should write to the DOJ's Civil Litigation Unit, at P.O. Box 7857, Madison, WI 53707-7857, and explain why you believe that the information in their database is incorrect.

Second, even if you have had three prior actions dismissed under Wis. Stat. § 801.02(7)(d), you can avoid dismissal of your petition if you pay the full filing fee to the clerk of court when you file the petition. The money to pay the fees up front can be taken out of your prison accounts (both your institution account and your release account), if there is enough in them to pay the filing fee in full. *See* Wis. Stat. § 801.02(7)(d); *State ex rel. Coleman v. Sullivan*, 229 Wis. 2d 804, 601 N.W.2d 335 (Ct. App. 1999).

However, in order to get the money in your release account to pay the filing fee in full, a court order will be necessary. *Id.* Although such a procedure is beyond the scope of this manual, you should realize that you would have to request the court order.

Third, the PLRA provides an exception to both the fee and "three strikes" provisions, **if** you can establish that you are in imminent danger of serious physical harm. *See* Wis. Stat. §§ 814.29(1m)(f), 801.02(7)(d). If you believe that you are in such danger, you may petition the court without providing an institution trust fund statement, and even if you have had three or more actions dismissed in the past.

It is not known at this time what this "imminent danger" provision means. However, it is difficult to imagine many inmate complaints that would fit the "imminent danger" requirement, so that procedure is not included in this manual.

*e. Penalty for Filing a False or Malicious Civil Action*

If the court finds that you have filed a suit for a malicious purpose or to harass the opposing party, or that you knowingly offered false evidence to the court, the **court can order the DOC to extend your mandatory release date.** *See* Wis. Stat. § 807.15.

In Section D, below, you will find the specific filing instructions and forms to comply with the PLRA.

**3. Avoiding the Requirements of the PLRA**

It is important to remember that you can avoid many of the requirements of the PLRA by

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paying the filing fees and costs up front.

If you are able to pay the filing fees and costs, you should enclose with your pleadings a money order, made out to the Clerk of Court, in the amount of the filing fee. Alternatively, you could have someone on the outside send the fees directly to the Clerk of Court on your behalf. Finally, as noted above, you can ask the court to order the DOC to provide funds for the filing fee out of your release account.

Even if you can pay the filing fees and costs, **you must *still* provide the court with documents proving that you have exhausted your administrative remedies.**

If you decide not to file the PLRA documents, you will be responsible for all costs and fees of the proceeding; not just the filing fee. For example, if the sheriff personally serves pleadings on the respondent, the sheriff either will make you pay the service fee up front, or will send you a bill after service.

### **C. Procedural Requirements for Certiorari Petitions**

This section outlines the procedural requirements for filing a certiorari petition. Since most inmates are indigent, this section assumes that you will need to comply with the procedures of the PLRA.

#### **1. Where to File (Venue)**

Your certiorari petition based on your ICRS complaint has nothing to do with your criminal case. Therefore, you do not file it with the court in which you were convicted.

Instead, you should file your petition in the **Dane County Circuit Court** in Madison. This is because the action is against the DOC Secretary, who is a state official acting in an official capacity, and whose business address is in Madison. *See Irby v. Young*, 139 Wis. 2d 279, 281, 407 N.W.2d 314 (Ct. App. 1987); Wis. Stat. § 801.50(3)(c).

The address for the Dane County Court is:  
**215 South Hamilton Street, #1000  
Madison, WI 53703.**

#### **2. When to File**

Under the PLRA, **there is a strict 45-day (calendar days) time limit for filing a certiorari petition.** *See* Wis. Stat. § 893.735. The PLRA's 45-day deadline begins to run on the date that you receive "actual notice" of the final decision by the DOC Secretary on your inmate complaint.

Remember, that, under Wis. Admin. Code § DOC 310.14, if you do not receive a written decision from the Secretary within 45 working days of the CCE's acknowledgment of receiving

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your appeal, the appeal is "deemed to be denied," unless the Secretary has extended his or her deadline for deciding your appeal, and has given you notice of the extension.

In other words, the PLRA's "actual notice" deadline starts running the date you receive the Secretary's decision on your appeal. However, **if you received no decision from the Secretary and no notice of an extension, your 45-day deadline for filing a certiorari petition starts running 45 working days after the CCE acknowledged receiving your appeal.** See *State ex rel. L'Minngio v. Gamble*, 2003 WI 82, ¶¶ 26-27, 263 Wis. 2d 55, 667 N.W.2d 1; *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, ¶ 15, 242 Wis. 2d 327, 629 N.W.2d 30.

You must file the certiorari petition within **45 calendar days** after you received notice that the Secretary denied your complaint or your complaint was deemed denied.

A petition is considered filed as of the date that you place it in the prison mailbox. See *State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶ 14, 239 Wis. 2d 327, 620 N.W.2d 409; *State ex rel. Brown v. Bradley*, 2003 WI 14, ¶¶ 9-10, 259 Wis. 2d 630, 658 N.W.2d 427.

However, this "mailbox rule" applies only to a petition that is complete, in proper form and accompanied by the required filing fee or the fee-waiver documents required by the PLRA. See *State ex rel. Tyler v. Bett*, 2002 WI App 234, 257 Wis. 2d 606, 652 N.W.2d 800.

To get the benefit of the mailbox rule, you must also submit along with your certiorari petition, a sworn affidavit (statement) that says when you placed the petition and accompanying documents in the prison mailbox. See *State ex rel. Shimkus v. Sondalle*, 2000 WI App 262, ¶ 2, 240 Wis. 2d 310, 622 N.W.2d 763; *State ex rel. L'Minngio v. Gamble*, 2003 WI 82, ¶ 29, 263 Wis. 2d 55, 667 N.W.2d 1. A sample affidavit is included as **Form 6** in Section V, below.

There may be certain situations in which a court will "toll" (stop) the PLRA's 45-day deadline. For example, as will be discussed later, the PLRA requires you to get a certification from the Wisconsin Department of Justice (DOJ) about whether you have had any prior lawsuits dismissed for failure to state a claim. You are not allowed to request this DOJ certification any earlier than 30 days before you file the certiorari petition.

Sometimes, there is a delay in getting the certification form back from the DOJ, so that the petition itself can get delayed. The Court of Appeals has ruled that the PLRA's 45-day time limit is tolled during the period that you are waiting for a response from the DOJ about your request for certification. See *State ex rel. Locklear v. Schwarz*, 2001 WI App 74, ¶ 26, 242 Wis. 2d 327, 629 N.W.2d 30. The affidavit (**Form 6** in Section V, below) includes a statement about when you requested the DOJ certification and whether/when you received it.

Similarly, the PLRA requires an inmate to send a certified statement of the funds in his or her prison trust account along with the certiorari petition. Some prison business offices will give the account statement to the inmate to file, while other prison business offices will send the account statement directly to the court.

If the prison business office sends the trust account statement directly to the court, the Court of

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Appeals has ruled that the 45-day time limit is tolled between the time an inmate requests the statement and the time the court receives the statement. See *State ex rel. Walker v. McCaughtry*, 2001 WI App 110, ¶ 16, 244 Wis.2d 177, 629 N.W.2d 17.

You should make every effort to get the business office to give the trust account statement directly to you. However, if the business office is going to send the statement to the court, you should make sure that you have a written record of the date when you asked the business office to send it.

**Form 6** in Section V, below, also includes a statement of when you requested your trust account statement from your prison business office and whether/when you received it.

Despite these tolling provisions, **you should assume that the filing deadline is 45 calendar days from the date you receive notice of the Secretary's decision or the date the complaint was deemed denied.**

According to the Dane County Court's Prisoner Litigation Staff Attorney, if you have not received your DOJ certification and/or your: trust account statement within the 45-day deadline, **you can go ahead and file anyway, and include the affidavit (**Form 6** in Section V, below) stating that you have requested these items.**

## **D. Forms and Instructions for Pleadings**

### **1. General Instructions**

All pleadings and documents filed with the court, except for exhibits, should be on regular-size (8½" x 11") paper.

Try to type all of your court papers. If you don't have access to a typewriter, print your papers so the court can read them easily. Be as neat as possible. You want to make your papers easy to read.

Be sure that there are **page numbers** on all your documents.

You are free to use the forms in this manual. Some lines on the forms give you a choice of two or more things to write. In these cases, you should fill out only the lines that apply to you.

There are a few blank lines that you should not fill in when you do your initial filing. For example, you will not be able to fill in the case number until after the court has assigned a number to your case. Similarly, you should not fill in the judge's signature on proposed orders.

If you make your own papers using these forms as a guideline, you can eliminate the form number at the top of the sheet, the italicized words in parentheses, and as many of the blank lines as you can.

In addition, whenever this manual supplies a standard court form (e.g. Court Form CV-438, the

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PLRA's "Affidavit of Indigency" form), you must use this standard court form. Otherwise, the court will consider your petition improperly filed.

All formal legal papers have **captions**. A caption is simply a formal heading which tells the name of the court, the names of the parties, the number of the case, and the title of the document.

Note that in the caption of the certiorari forms, you should fill in the following:

- **Your name and address** after "State ex rel.," since you are the petitioner in the action. Wis. Stat. § 802.04.
- **The name and address of the DOC Secretary** as the respondent. Wis. Stat. § 802.04. As of 2016, the Secretary's address is:

Wisconsin Department of Corrections  
3099 East Washington Avenue  
Madison WI 53704

We have pre-filled in the Secretary's address on the forms in this manual. **But you will still need to write in the current Secretary's name.** And, obviously, if the Secretary's address changes in the future, you will need to change it on the forms.

- **A case number.** The case number is assigned by the court only after the case is filed. Thus, in your first set of papers you will leave the case number blank.
- **A case classification code.** The case classification code for a certiorari petition is **30955**. You must put the case classification code in the caption of all your pleadings, under the case number.

None of the forms asks the court to provide you with court-appointed counsel to represent you in your case. This is because the state courts generally will not appoint counsel at public expense in conditions of confinement cases. Unlike a criminal case, a prisoner has no right to have an attorney appointed at public expense to challenge a DOC decision on an inmate complaint.

In addition, the State Public Defender's Office does not handle "conditions of confinement" cases.

Finally, a private attorney cannot handle your case on a contingency basis. This is because money damages cannot be awarded on a writ of certiorari and, therefore, representation on a contingency fee basis is not possible.

For these reasons, **this manual is designed to help you pursue your certiorari petition on your own.**

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## **2. PLRA Forms and Instructions**

Under the PLRA, the procedure for filing a civil case is complicated. PLRA forms are included below in Section V of this manual. Be careful to use these forms, and to follow the instructions below. Remember, it is extremely important that you follow the PLRA procedures exactly.

### **Step 1: Get a Certification from the Wisconsin Department of Justice**

The first thing you need to do is to send a form letter to the Civil Litigation Unit of the Wisconsin Department of Justice (DOJ) requesting a certification of whether you have had three prior civil actions dismissed. You should use **Form 1**, DOC Form 2257, to write to the DOJ. You need to get the certification from the DOJ no more than 30 days before you file your case.

The DOJ will send you a certification form (officially called Form DJLS22), which will list the number of your prior civil filings that have been dismissed. Under the PLRA, you are required to file the **original** DJLS22 form along with the pleadings in your civil case. Wis. Stat. § 801.02(7)(d).

According to the DOJ's Civil Litigation Unit, the DJLS22 form is usually sent out within 48 hours of receiving a request from an inmate, so you should receive it a week or so after you send in your request. However, remember that the DJLS22 form cannot be dated more than 30 days before you file your civil case.

If you have not received the DJLS22 form by the time your 45-day deadline is running out, you can go ahead and file your certiorari petition without this form, but include **Form 6**. **Form 6** is an affidavit in which you state when you requested the DJLS22 form.

### **Step 2: Get a Six-Month Certified Account Statement of Your Trust Account**

While you are waiting for the DJLS22 form, you should ask your prison business office to give you a certified six-month account statement of your prison trust fund account for the most recent six months prior to the date you are filing the pleadings in your civil case. Wis. Stat. § 814.29(1m)(b)2.

If the business office is not willing to give the statement directly to you, you should give them the address of the court, and ask them to mail it directly to the court. Be sure to make a written record of when you asked for the statement to be mailed to the court, so that you can include that information on **Form 6**.

### **Step 3: File the Required PLRA Forms along with Your Pleadings in the Civil Case**

Once you receive the DJLS22 form back from the DOJ, and your certified six-month account statement is either given to you or has been sent to the court, you can file your certiorari petition.

In addition to your certiorari petition and the proposed writ of certiorari form (discussed later),

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you should complete and file all the PLRA documents listed below:

- 1) Court Form CV-438, "Prisoner's Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency" (Form 2). Be sure to answer each and every question on the affidavit form, even if it seems irrelevant (for example, if it asks about stocks and bonds). If you do not answer all the questions, the court may send it back to you. **Note that your signature on Form CV-438 must be notarized.** You should check at your institution to see who is a notary public who can witness you signing this form.
- 2) The certified six-month account statement for your prison trust account, for the six months prior to the date that you file your certiorari petition. If you have not received the trust account statement within your 45-day deadline, you can leave it out and state that you have not yet received it on **Form 6** ("Affidavit of Petitioner").
- 3) DOC Form 1930, "Authorization to Withhold Money from Trust Account" (Form 3). This authorization allows the DOC to forward payments from your prison accounts (regular and release) to the clerk of courts, until the fees/costs of the action are paid in full.
- 4) The original DOJ certification (Form DJLS22) stating that you have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d). If you have not received the DOJ certification within your 45-day deadline, you can leave it out and state on **Form 6** ("Affidavit of Petitioner") that you have not yet received it.
- 5) Documentation proving that you have exhausted your administrative remedies. This documentation will be discussed in the following section.

### 3. *The Certiorari Petition*

The certiorari petition is provided as **Form 4**. This is the document that states the basic facts and the reasons you believe the circuit court should reverse the Secretary's decision on your inmate complaint.

**Form 4** gives you blank lines in which to describe what happened in the inmate complaint process. You may need more room to fully explain what happened. If so, you should attach more pages.

The petition is where you want to explain fully what happened to you and your complaint, and what you want the judge to do about it. This is where you explain the facts and where you tell how you were wronged in the process. The petition is the heart of your court papers, and you want to make sure you have covered everything here.

Even though you want to be thorough, you should also do your best to be brief and to the point. You do not want to irritate the judge by going on too long.

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*a. Caption*

Note that the caption to the petition includes space for addresses for you and the Secretary of Corrections, as respondent. The addresses are required on the certiorari petition and on the writ form. **These addresses are required** by statute and the Dane County Court's local rules. If you do not include them, your petition and other documents will be returned to you.

Just to be safe, this manual suggests that you include the addresses on all pleadings that you file. On the forms in this manual, we have pre-filled in the Secretary's address as of 2016, but **you will need to make sure you include the Secretary's name, along with your own name and address.**

*b. Petition Form*

**Paragraphs 1 and 2** of the petition provide information about you, as the petitioner, and about the Secretary of Corrections, as the respondent.

**Paragraphs 3 and 4** list the administrative rules you have been operating under.

**Paragraph 5** asks for the number of your inmate complaint. Inmate complaint forms have a number on the top. **Be sure to include the complaint number in your petition**, so that everyone knows exactly which complaint you are challenging.

**Paragraph 6** states when you filed your complaint with the ICE.

**Paragraph 7** states when the ICE acknowledged receiving your complaint.

**Paragraph 8** asks for an explanation of your complaint. You can quote directly from the complaint. Or, if you want, you can summarize to explain the nature of your complaint.

The ICRS gives the ICE authority to investigate complaints. In **Paragraph 9**, you can explain what the ICE did or didn't do in investigating your complaint.

In **Paragraph 10**, you describe the ICE's recommendation about your complaint to the "Appropriate Reviewing Authority" (ARA), if you had an opportunity to see that recommendation. If you did not see the ICE's recommendation, leave this paragraph blank.

In **Paragraph 11**, you summarize the reasons given by the ICE for the recommendation. If you did not see the ICE's recommendation, leave this paragraph blank.

In **Paragraph 12**, tell the court what the ARA did with your complaint, and when.

Remember, if you received no response from the ARA within **30 working days** after the ICE acknowledged receipt, your appeal was deemed denied by the ARA, and you should say so in Paragraph 12. § DOC 310.12(3).

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In **Paragraph 13**, you tell the court that you appealed the ARA's decision to the Corrections Complaint Examiner (CCE), and within the time limits. This tells the court that you used all the administrative channels available to you.

In **Paragraph 14**, you tell the court the date that the CCE acknowledged receiving your appeal.

In **Paragraph 15**, you state what recommendation the CCE made to the DOC Secretary, and when. If you don't have this information, you can so state.

**Paragraph 16.** There are two options in Paragraph 16. **Paragraph 16(a)** is used if you received a decision from the Secretary within 45 days of the date the CCE acknowledged receipt of your appeal. **Paragraph 16(b)** is used if you did not receive a decision from the Secretary within the 45-day time limit. In that case, under the administrative code, your appeal was deemed denied.

In **Paragraph 17**, you tell the court that you have made use of all of the administrative mechanisms and appeals within the DOC rules that are available to you, and so your case is ready for court review. This is called "exhausting your administrative remedies."

**Paragraph 17** also states that, along with your petition, **you are including documentation proving that you have exhausted your administrative remedies.** In general, this documentation will include copies of all of the following written materials:

- Your inmate complaint;
- The Institution Complaint Examiner's (ICE's) receipt;
- The ICE's report and recommendation (if you have it);
- The "Appropriate Reviewing Authority's" decision on the complaint (if any);
- Your appeal to the Corrections Complaint Examiner (CCE);
- The CCE's receipt;
- The report and recommendation of the CCE (if you have it); and
- The decision (if any) of the Secretary of the DOC.

In **Paragraph 18**, you tell the court exactly how your rights have been denied. **This is a very important part of your petition.** This is where you explain why you believe the respondent's actions with regard to your complaint were in error, arbitrary and capricious, or contrary to law.

In completing Paragraph 18, it will be helpful to review the standards a court uses in ruling on a certiorari petition, which are outlined above in Section III.A.3, "Limits on Judge's Review in a Certiorari Proceeding."

Use as many brief, lettered subparagraphs under Paragraph 18 as are necessary to state all of your reasons for asking the court to take action on your petition. The form petition includes four lettered subparagraphs, but you can add a page that includes more if you need more subparagraphs.

You do not need to cite a lot of case law under Paragraph 18. Instead, focus on the facts that

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show the decision on your complaint was wrong. As always, be as specific and as clear as you can, but also be brief and to the point.

c. *Date and Signature*

**You must sign and date the petition.** At the end of the petition is a place for you to write in your signature and the date.

**4. *The Proposed Writ of Certiorari***

**Form 5** is the proposed writ of certiorari that you want the court to sign. You should fill in the entire caption (leave the case number blank, since it has not yet been assigned). **Remember to include your name and addresses and the name of the DOC Secretary as the respondent.**

The judge can use this writ form to order the respondent to produce the return (or record) in the case. Alternatively, the judge may decide to use his or her own writ form. You should leave the signature line for the judge blank.

This writ of certiorari form commands the respondent to prepare the written record of your inmate complaint and file it with the court. This record is called the "return."

The return is the record that the judge will consider in deciding your claim. Generally, with this procedure, all the judge will have to base his or her decision on is the return and the parties' briefs.

The court can give the respondent up to 60 days to produce the return, but the practice generally has been to require a return within 30 days of receipt of service of the writ. The proposed writ form supplied in this manual allows for 30 days.

**5. *Other Documents to Include with Your Certiorari Forms***

**Form 6** is an affidavit (statement) you can use to tell the court that you have made every effort to comply with the requirements of the PLRA. On the affidavit, you can state the following:

- When you requested a copy of your prison trust fund statement from your institution's business office, and whether/when you received the statement;
- When you requested the DOJ certification form (Form DJLS22), and whether/when you received the certification; and
- The date that you are placing your documents in the prison mailbox.

**You will need to have a notary public witness your signature on the affidavit form.** You should check with the records office at your institution to find out which prison staff members are notaries. Then you should sign the affidavit in front of the notary.

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It is helpful to have a cover letter to send to the court with all of your materials. **Form 7** is a cover letter that you can use.

Once you have completed your affidavit, you should put all your certiorari materials, including the PLRA materials and cover letter, in the prison mailbox the same day.

**6. Checklist of Documents to Send to Court**

- 1) Court Form CV-438, "Prisoner's Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency" (Form 2).
- 2) The certified six-month account statement for your prison trust account, for the six months prior to the date that you file your certiorari petition.\*\*
- 3) DOC Form 1930, "Authorization to Withhold Money from Trust Account" (Form 3).
- 4) The **original** DOJ certification (Form DJLS22) that you have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d).\*\*
- 5) The petition for writ of certiorari (Form 4).
- 6) The proposed writ of certiorari (Form 5).
- 7) Documentation proving that you have exhausted your administrative remedies.
- 8) A notarized affidavit, in which you state when you requested and whether/when you received your prison trust fund statement and DOJ certification, as well as the date you placed the documents in the prison mailbox (Form 6).
- 9) A cover letter to the court (Form7).

**\*\*If you have requested, but have not yet received, the trust account statement and/or Form DJLS22, you can leave them out, but you should be sure to include Form 6.**

**You should file 2 copies of each of the documents listed above.** The first copy of the documents is for the court file. The second copy of the documents will eventually be served upon (given to) the Secretary.

Finally, be sure to **keep a copy of every paper that you send to the court.**

You file the documents by mailing them to:

**Dane County Clerk of Circuit Court  
215 South Hamilton Street, # 1000  
Madison, WI 53703.**

## E. The Judge's Initial Rulings

In this section, we will assume that you have properly filed all of the documents required by the PLRA, along with the certiorari petition and proposed writ.

Next, the judge will determine whether you are indigent. If the judge finds you indigent, he or she will issue an "Order on Prisoner's Petition for Waiver of Prepayment Fees/Costs."

If the judge does not find you indigent, you will be notified that you will have to pay the filing fee before the judge will review the petition.

Assuming that the judge has found you indigent, he or she will do an initial review of your certiorari petition itself. Under Wis. Stat. § 802.04, the judge can deny the petition without requiring a response from the respondent, if the petition:

- Is legally frivolous, as defined in Wis. Stat. § 814.025(3); or
- Is used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; or
- Seeks monetary damages from a defendant who is immune from such relief; or
- Fails to state a claim upon which relief may be granted.

If the judge denies the petition under Wis. Stat. § 802.04, you will be notified in writing.

Remember, if the judge denies the petition under § 802.04, **this will count as a "strike" against you** under Wis. Stat. § 801.02(7)(d), if you try to file future civil cases under the PLRA. *See* the discussion of the "three strikes" rule in Section III.B.2.d, above.

If the judge does not deny the petition, the judge will sign the writ of certiorari. Remember, **the writ simply commands the respondent to file a "return" (a copy of the record)**. The fact that the judge signed the writ does not mean that you have won the case.

Assuming that the judge has ruled that you are indigent and that prepayment of fees and costs should be waived, the court clerk will "authenticate" (date-stamp) one copy of each of the filed documents, including the certiorari petition and the signed writ. The clerk will then return the authenticated documents to you. The clerk will also send you a copy of the order waiving prepayment of fees/costs, signed by the judge.

## F. What to Do With the Papers the Court Sends You

As soon as you get the authenticated documents and the signed order waiving fees/costs back from the court, **you should make another copy of each authenticated and/or signed**

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### **document for your own records.**

Then, mail the following documents to Dane County Sheriff's Department, 115 W. Doty Street, Madison, WI 53703:

- The authenticated petition;
- The signed writ;
- The signed order waiving prepayment of fees and costs; and
- The authenticated documentation showing that you have exhausted your administrative remedies.

You should also include the signed order waiving prepayment of fees and costs.

Finally, you should include a cover letter stating that you are asking that the Sheriff's Department serve the authenticated/signed documents on the Secretary of Corrections, without requiring prepayment of the service fee (**Form 8**).

The Dane County Sheriff's Department will serve the documents on the Secretary of Corrections at the DOC's main address in Madison. As of 2016, the cost of service is **\$40** per person served, plus the cost of mileage.

The Sheriff's Department will then mail you an "affidavit of service," which you should keep. The affidavit proves that the Secretary's office was served with the certiorari petition, writ, and other filed documents.

Along with the affidavit of service, the Sheriff's Department will send you a bill for the amount of service. You should give this bill to the prison business office, along with a copy of **Form 4** (your authorization to the DOC to have filing fees and costs taken out of your prison accounts), and a copy of the court's signed order waiving prepayment of fees and costs. The service fee will then be paid back to the Sheriff's Department out of your prison accounts.

### **G. What Happens Next?**

Once the DOC Secretary is served with your documents, he or she will have 30 days to file a "return." However, if the judge used his or her own writ form rather than the one provided in this manual, the judge may give the Secretary up to 60 days to file a return.

The return should consist of copies of all documents involved or considered in the inmate complaint process. This would typically include:

- The inmate complaint you wrote;
- The ICE's acknowledgment;
- The ICE's recommendation;
- The "Appropriate Reviewing Authority's" decision (if any);

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- Your appeal to the CCE;
- The CCE's acknowledgment;
- The CCE's recommendation to the Secretary; and
- The Secretary's decision (if any).

The return could also include any additional documents that were included at any point in the process (for example, documents attached to your complaint, or documents that were part of the ICE's investigation).

Once the initial documents are filed and served, you are responsible for sending the respondent or the respondent's attorney a copy of any later document that you file in the case (including any letters to the court).

However, although your initial documents must be served by personal (sheriff's) service, these later documents can be served by first-class mail.

At some point in this process (probably when the return is filed), the attorney for the respondent will file a "Notice of Appearance." The attorney may be an assistant attorney general in the Department of Justice, or may be one of the attorneys in the office of the DOC Legal Counsel.

Either way, you should receive a copy of this Notice of Appearance. Once you know which attorney is representing the respondent, you should send copies of all future documents that you file with the court to that attorney, rather than to the respondent.

Once a proper and complete return is filed, the judge may set up a briefing schedule to address the merits of the case. The schedule will typically provide for a brief by the petitioner (you), a response brief from the respondent's attorney, and your reply brief.

If the court does not order a briefing schedule, you can write to the court, with a copy to the respondent's attorney, and ask for a briefing schedule. However, the judge is not required to order briefing in the case.

If you do file a brief, it should outline the relevant facts from the record, and the arguments in favor of your motion, including citations to any cases which support those arguments.

After briefs are filed, the judge will issue an order granting or denying the relief you requested.

If the judge rules against you, you may wish to consider taking an appeal to the Court of Appeals.

Appealing a decision on a certiorari case is beyond the scope of this manual. However, the *LAIP Desk Book* does include a manual for people who are representing themselves on appeal, which was prepared by the Clerk of the Court of Appeals. This manual, "A Guide to Appellate Procedure for the Self-Represented," is in Chapter 7 of the *Desk Book*.

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Remember, however, that the PLRA's fee provisions do apply to the fees and costs involved in appeals. This means that, if you are indigent, you can get a waiver of prepayment of appellate fees and costs, but you will have to pay these fees/costs back out of your institution trust funds.

Finally, **Form 9** is a general cover letter. This is a sample letter to the court which should accompany any additional documents (e.g. motions or briefs) that you submit for filing in your case, after the initial filing.

In your cover letter, you should state the title of every paper that you submit with the letter. Your cover letter should list the respondent's attorney in the "cc" ("copy to") line, to show that you have sent copies of the cover letter and any enclosed documents to the attorney. **Again, remember that you should always keep a copy of any document you send out.**

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#### **IV. CONCLUSION**

Remember, this manual can only get you started on the process of filing a certiorari petition. Legal cases take on a life of their own, once they've been filed. It is not possible in a *pro se* manual to anticipate and discuss all the possible ways that a case could proceed. Instead, we have attempted to provide information that will help you file legally correct documents, so that the court can consider your case on its merits.

Remember also that statutes can change, and the case law interpreting the statutes can also change. So it is important to double-check current statutes and case law, in order to make sure that the law hasn't changed by the time you want to file your own certiorari petition.

## V. SAMPLE FORMS FOR FILING A CERTIORARI PETITION

Note: except for Forms 1, 2 and 3, the forms included in this manual are only samples (for Form 3, you should get an original form from your institution librarian). You can use them if they are appropriate to your case, but you may need to modify them to suit the circumstances of your case.

- Form 1:** DOC Form 2257, “Offender Request for Department of Justice Certification”
- Form 2:** Court Form CV-438, "Prisoner's Petition for Waiver of Prepayment of Fees/ Costs—Affidavit of Indigency"
- Form 3:** Sample DOC Form 1930, “Authorization to Withhold Money from Trust Account”
- Form 4:** Sample Petition for Writ of Certiorari
- Form 5:** Sample Proposed Writ of Certiorari
- Form 6:** Sample Affidavit of Petitioner
- Form 7:** Sample cover letter to accompany your initial filing
- Form 8:** Sample letter to Dane County Sheriff requesting service
- Form 9:** Sample general cover letter

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**FORM 4**

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE EX REL. \_\_\_\_\_

\_\_\_\_\_  
*(your name and address)*

Petitioner,

v.

Case No. \_\_\_\_\_

Case Classification Code 30955

\_\_\_\_\_  
Wisconsin Department of Corrections

\_\_\_\_\_  
3099 East Washington Avenue

\_\_\_\_\_  
Madison, WI 53704

\_\_\_\_\_  
*(DOC Secretary's name and address)*

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO: Judge of the Circuit Court  
Dane County Circuit Court  
215 South Hamilton Street, #1000  
Madison, Wi 53703

I, \_\_\_\_\_, the petitioner in this action, respectfully, state as follows:  
*(your name)*

1. I am now confined at \_\_\_\_\_ Correctional Institution.  
*(name of institution)*

2. The respondent, \_\_\_\_\_ is the Secretary of the  
*(Administrator's name)*

Wisconsin Department of Corrections.

3. The Inmate Complaint Review System, or ICRS, is an administrative mechanism in which inmates can file grievances, and is described in Wis. Admin. Code § DOC Chap. 310.















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FORM 5

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STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

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STATE EX REL. \_\_\_\_\_

\_\_\_\_\_  
(*your name and address*)

Petitioner,

v.

Case No. \_\_\_\_\_

Case Classification Code 30955

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Wisconsin Department of Administration

3099 East Washington Avenue

Madison, WI 53704

\_\_\_\_\_  
(*DOC Secretary's name and address*)

Respondent.

---

WRIT OF CERTIORARI

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THE STATE OF WISCONSIN:

TO: (*Secretary's name and address*)

\_\_\_\_\_  
Wisconsin Department of Corrections

3099 East Washington Avenue

Madison, WI 53704

**WHEREAS**, it has been represented to this court by the petition of \_\_\_\_\_  
\_\_\_\_\_, that this respondent has denied the petitioner's inmate complaint contrary  
to law and justice; and being willing that the record of the proceedings upon which that denial of  
petitioner's inmate complaint is based be certified and returned by you to our court;

**WE HEREBY COMMAND YOU** to certify and return to this court within thirty days  
after service of this writ upon you, a correct transcript of the record and proceedings in the  
Inmate Complaint Review System proceedings, together with all the papers, documents, and  
docket entries involved or considered by you in the proceedings.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Circuit Judge

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FORM 6

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE EX REL. \_\_\_\_\_

\_\_\_\_\_  
(*your name and address*)

Petitioner,

v.

Case No. \_\_\_\_\_

Case Classification Code 30955

\_\_\_\_\_  
Wisconsin Department of Administration

\_\_\_\_\_  
Division of Hearings and Appeals

\_\_\_\_\_  
5005 University Avenue, Suite 201

\_\_\_\_\_  
Madison, WI 53705-5400

\_\_\_\_\_  
(*Secretary's name and address*)

Respondent.

AFFIDAVIT OF PETITIONER

STATE OF WISCONSIN )

COUNTY OF \_\_\_\_\_ )

(*county where you are now housed*)

I, \_\_\_\_\_, being first duly sworn on oath, depose and state the  
(*your name*)

following:

(1) On \_\_\_\_\_, 20\_\_\_\_, I requested a copy of my prison trust fund  
(*date*)

statement from the business office at \_\_\_\_\_.

(*name of your institution*)



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\_\_\_\_\_  
(*your signature*)

\_\_\_\_\_  
(*your printed or typed name*)

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
My Commission expires \_\_\_\_\_

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**FORM 7**

*Your name, DOC number & address:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Clerk of Circuit Court  
Dane County Courthouse  
215 S. Hamilton Street, #1000  
Madison, WI 53703

Re: *State ex rel.* \_\_\_\_\_ v. \_\_\_\_\_ (*case name*)  
Dane County Case No. \_\_\_\_\_

Dear Clerk:

Enclosed please find for filing the original and one copy of each of the following documents:

- Court Form CV-438, "Prisoner's Petition for Waiver of Prepayment of Fees/Costs--Affidavit of Indigency."
- A certified six-month account statement for my prison trust account.\*\*
- DOC Form 1930, "Authorization to Withhold Money from Trust Account."
- A DOJ certification (Form DJLS22) stating that I have not had three or more previous filings dismissed under Wis. Stat. § 801.02(7)(d).\*\*
- My petition for writ of certiorari.
- A proposed writ of certiorari.
- Documentation proving that I have exhausted my administrative remedies.
- A notarized "Affidavit of Petitioner."

*\*\* (Cross out items these items if you have not yet received them)*

If the court decides to sign the proposed writ and an order waiving prepayment of fees and costs, please return one copy of the authenticated certiorari petition, the signed writ, and the signed order waiving prepayment of fees and costs to me at the address above.

I will then forward the appropriate documents to the Sheriff's Department for service upon the respondent. Thank you for your attention to this matter.

Very truly yours,

\_\_\_\_\_  
(*your signature*)

Enclosures

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**FORM 8**

*Your name, DOC number & address:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Dane County Sheriff's Department  
115 W. Doty Street  
Madison, WI 53703

Re: *State ex rel.* \_\_\_\_\_ v. \_\_\_\_\_ (*case name*)  
Dane County Case No. \_\_\_\_\_

Dear Sheriff:

I am the petitioner in the above-captioned case. Enclosed please find an authenticated copy of my petition for writ of certiorari, the writ of certiorari signed by the court, and documentation that I have exhausted my administrative remedies.

Please serve the documents listed above on the respondent at the address listed on the writ, without requiring prepayment of service fees. I have enclosed a signed order waiving prepayment of fees and costs.

Please send an affidavit of service to me at the address above. Thank you for your attention to this matter.

Very truly yours,

\_\_\_\_\_  
(*your signature*)

Enclosures

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**FORM 9**

*Your name, DOC number & address:*

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Date: \_\_\_\_\_

Clerk of Circuit Court  
Dane County Courthouse  
215 S. Hamilton Street, # 1000  
Madison, WI 53703

Re: *State ex rel.* \_\_\_\_\_ v. \_\_\_\_\_ (*case name*)  
Case No. \_\_\_\_\_

Dear Clerk:

Enclosed please find for filing in the above captioned case:  
*[list your papers below].*

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Thank you for your attention to this matter.

Very truly yours,

\_\_\_\_\_  
*(your signature)*

Enclosures

cc: Respondent's attorney (with address)  
w/ enclosures *[you must send the respondent's attorney copies of all documents that you send to the court]*