

Michigan Supreme Court
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John D. Ferry, Jr., State Court Administrator

M E M O R A N D U M

TO: Chief Judges
CC: Court Administrators and Court Clerks

FROM: John D. Ferry, Jr.

DATE: December 7, 2000

RE: SCAO Administrative Memorandum 2000-10;
Prison Condition Lawsuits (1999 Public Acts 147 and 148)

REPLACES: SCAO Administrative Memorandum 2000-01

EFFECTIVE

DATE: Immediately

Legislation effective November 1, 1999, was enacted to limit the filing of prisoner lawsuits, including those filed regarding prison conditions. The laws restrict the number of lawsuits that may be filed by a prisoner, place certain conditions on the filings, and create a new reporting requirement on courts and the State Court Administrative Office (SCAO). Also, judges are granted the authority to reduce or forfeit a prisoner's good time or disciplinary credits if the prisoner files an action prohibited under provisions of the new laws. [*MCL 600.5501 et seq., MCL 600.2963, and MCL 800.33*]

Courts must forward a copy of SCAO Form CC 78 (Dismissal of Prisoner Civil Action, Frivolous Action) to the SCAO upon entry. SCAO will compile information on all dismissals received and provide it on request to courts receiving new prisoner filings regarding prison conditions. *See Section B.4. below for specific instructions on forwarding and receiving dismissal information.*

A. Summary of the Legislation

1. Complaint and Filing

- a. A civil action, or appeal of a civil action, may not be filed by a prisoner who claims indigency until the court waives the filing fees or orders full or partial payment, and payments are made in accordance with the order. Once

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the reason for the waiver or suspension of fees no longer exists, the court is to order the fees and costs to be paid by the prisoner.

- b. A prisoner may not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies.
- c. Prisoners are required to indicate on their pleadings the number of previously filed civil actions or appeals of actions regarding prison conditions; failure to disclose this information will result in dismissal.
- d. A prisoner may not bring an action for mental or emotional injury unless the prisoner shows physical injury arising out of the incident giving rise to the mental or emotional injury.

2. Filing Fees and Dismissals

- a. A prisoner may not claim indigency to qualify for waiver of filing fees nor may the prisoner request appointment of counsel if they have brought an action that was dismissed as frivolous three or more times by the court unless they have suffered, or are under imminent danger of suffering serious physical injury, or have suffered, or are under imminent danger of suffering a criminal sexual conduct offense.
- b. Once filed, the court may dismiss a case on the finding that:
 - 1) the allegation of indigency is untrue;
 - 2) the action or appeal is frivolous;
 - 3) the action or appeal seeks monetary relief against a defendant who is immune from the requested relief; or
 - 4) the prisoner has not exhausted all administrative remedies.
- c. The court may dismiss, regardless of any filing fee paid, on the finding that:
 - 1) the claim of injury or imminent danger is false; or
 - 2) the prisoner failed to disclose the number of previously-filed actions regarding prison conditions.

3. Conduct of Hearing

- a. The court is to review as soon as practicable a complaint seeking redress from a governmental entity or officer or employee of a governmental entity.
- b. A defendant may waive the right to reply to an action; however, a waiver does not constitute an admission of the allegations. Relief shall not be granted unless a reply has been filed. The court may require a defendant to reply if it finds that the plaintiff is likely to prevail on the merits; if the complaint is not dismissed, the court is to state on the record the reason for the decision.
- c. To the extent practicable, the court should use telephone, video conference, or other technology for pretrial proceedings; subject to agreement of the prison, hearings may be conducted at the prison with counsel being allowed to participate using telephone, video, or other technology.

4. Disposition

- a. Any damages awarded a prisoner shall go toward outstanding restitution orders; reasonable efforts are to be made to notify crime victims regarding the pending payment of damages.
- b. The court may order the revocation of good time or disciplinary credits if it finds:
 - 1) the prisoner has not exhausted all available administrative remedies;
or
 - 2) their allegation of indigency is untrue

and one of the following applies:

- 1) the action or appeal seeks monetary relief against a defendant who is immune from requested relief;
- 2) the claim was filed for a malicious purpose;
- 3) the claim was filed solely to harass the party against whom it was filed; or
- 4) the prisoner testified falsely or otherwise knowingly presented false evidence or information to the court.

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Judges should consult with their local Department of Corrections probation office, who will assist them in determining the number of days that are available for revocation.

- c. No prospective relief (any relief other than monetary) shall be granted unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation, and is the least intrusive means necessary to correct the violation of the right. The court is to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief.
- d. The court may enter a temporary restraining order or an order for preliminary injunctive relief under certain conditions. In tailoring the relief, the court is to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief. Preliminary injunctive relief shall automatically expire 90 days after the order is entered unless otherwise ordered by the court.
- e. Prospective relief may be modified or terminated under certain conditions enumerated in the act or on agreement of the parties.
- f. A defendant or intervener is entitled to immediate termination of prospective relief under certain conditions.

Judges should review the full text of the public acts, copies of which are attached, to note any specific conditions or exceptions.

B. Reporting Requirements

- 1. Upon entry, circuit courts are required to submit to SCAO a copy of all dismissals (frivolous action) of prisoner lawsuits filed regarding prison conditions. The dismissal shall state any outstanding filing fees and costs owed by the prisoner. New SCAO Form CC 78 (Revised 5/00, attached) has been developed for this purpose and may be mailed or faxed to SCAO as directed below and on the form. Camera-ready copies of CC 78 will be forwarded to SCAO Forms Contacts.
- 2. The SCAO is to compile and maintain a list of civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. The list is to include an account of the amount of unpaid fees and costs associated with each dismissed case. The list is to be made available by the SCAO and courts are to refer to the list for the purpose of determining the existence and number of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs.

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3. The SCAO will establish a statewide database and enter the information from local circuit courts onto the database. This information will then be available on request of local courts who receive a prisoner complaint to verify the number of cases previously filed and outstanding fees/costs. The information will be used by the judge to determine if the case will be reviewed by the court in accordance with provisions of the new law.
4. Contact Information:

Send the completed and signed Form CC 78 (Dismissal of Prisoner Civil Action, Frivolous Action) to:

**State Court Administrative Office
Office of Executive Management
Attention: Fran Goff
P.O. Box 30048
Lansing, Michigan 48909
FAX No.: 517/373-9831**

To obtain information on previous dismissals, contact:

**Fran Goff
Office of Executive Management
P.O. Box 30048
Lansing, Michigan 48909
Phone: 517/373-0128
E-mail: MSC-Info@courts.mi.gov**

5. This new reporting requirement will be included in future statewide network programming when it becomes available.

For further information, contact Dawn Childress in Trial Court Services at 517-373-3756 or childressd@courts.mi.gov.

Attachments:

1. 1999 Public Act 147
2. 1999 Public Act 148
3. SCAO Form CC78 (5/00) Dismissal of Prisoner Civil Action, Frivolous Action