

FORM SUMMARY

Name of Form:	Prisoner's Petition for Waiver of Prepayment of Fees/Costs— Affidavit of Indigency
Form Number:	CV-438
Statutory Reference:	§814.29, Wisconsin Statutes
Benchbook Reference:	CV 46-3
Purpose of Form:	For a prisoner to seek to begin an action or special proceeding without prepayment of filing fees, costs, or security for costs.
Who Completes It:	Prisoner completes the affidavit portion.
Distribution of Form:	Original to court file, copy (to be provided by prisoner) to be sent to the Department of Justice after the court enters an order (CV-439).
Accompanying Forms:	<p>The prisoner is required to provide two complete copies of the affidavit of indigency and other attachments. The attachments are to be:</p> <ul style="list-style-type: none">• [if the proposed action applies to prison or jail conditions] documentation showing exhaustion of all available administrative remedies.• a certified copy of the prisoner's trust fund account for the last six months.• authorization in writing to the agency having custody of the prisoner's trust fund account to forward payments from that account to cover filing fees and costs. <p>The prisoner must also provide sufficient copies of the summons/complaint/petition to be potentially served on the defendants/respondents.</p>
New Form/Modification:	Modification, last update 12/01.
Modifications:	In item #1, added word 'prepayment' so line reads "...and request waiver of prepayment of those costs because of poverty."
Comments:	The new prison litigation law (1997 Wisconsin Act 133) becomes effective September 1, 1998. This law creates significantly different procedural requirements for a prisoner seeking to commence an action or special proceeding without prepayment of filing fees, costs, or security for costs. Because of the different decisions that must be made by the court, this specialized form must be used in lieu of CV-410, the general Petition for Waiver of Fees/Costs—Affidavit of Indigency and Order.

The major distinction between a prisoner's affidavit of indigency and a nonprisoner's affidavit (using CV-410) are:

- There is no "automatic eligibility" section comparable to section 1 on CV-410. The prisoner must complete the financial information.
- The prisoner must attach a certified copy of the prisoner's trust fund account for the last six months.
- The prisoner must include written documentation that the available administrative remedies have been fully exhausted.
- The prisoner must affirmatively show that she/he has not had more than three dismissals for any of the reasons listed in §802.05(3)(b)1-4, Wisconsin Statutes, in any state or federal court of an appeal, writ or error, action, or special proceeding. The department of justice will be maintaining a database of prisoner litigation and will provide to prisoners a certification showing the number of such dismissals.

As with a nonprisoner's affidavit (using CV-410), the prisoner must attach a copy of the pleadings.

For a more detailed statement of the court's duties upon receipt of a prisoner's affidavit, see form summary for the court order CV-439.

If a prisoner is alleging that he/she is in imminent danger of physical harm, a separate petition (CV-440) and court order (CV-441) should be used because the factors that the prisoner and court must consider are different.

About this form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.