

**As Reported by the Senate Judiciary--Criminal Justice Committee**

**124th General Assembly**

**Regular Session**

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**S. B. No. 168**

**SENATOR Oelslager**

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**A B I L L**

To amend sections 2323.52, 2501.16, 2503.17, 2969.21, 1  
2969.22, and 2969.25 of the Revised Code to extend 2  
the application of the vexatious litigator law to 3  
actions commenced in a court of appeals and to 4  
exclude the Supreme Court from the laws pertaining 5  
to collection of fees from inmates filing civil 6  
actions against a governmental entity or employee. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2323.52, 2501.16, 2503.17, 2969.21, 8  
2969.22, and 2969.25 of the Revised Code be amended to read as 9  
follows: 10

**Sec. 2323.52.** (A) As used in this section: 11

(1) "Conduct" has the same meaning as in section 2323.51 of 12  
the Revised Code. 13

(2) "Vexatious conduct" means conduct of a party in a civil 14  
action that satisfies any of the following: 15

(a) The conduct obviously serves merely to harass or 16  
maliciously injure another party to the civil action. 17

(b) The conduct is not warranted under existing law and 18  
cannot be supported by a good faith argument for an extension, 19

modification, or reversal of existing law. 20

(c) The conduct is imposed solely for delay. 21

(3) "Vexatious litigator" means any person who has 22  
habitually, persistently, and without reasonable grounds engaged 23  
in vexatious conduct in a civil action or actions, whether in the 24  
court of claims or in a court of appeals, court of common pleas, 25  
municipal court, or county court, whether the person or another 26  
person instituted the civil action or actions, and whether the 27  
vexatious conduct was against the same party or against different 28  
parties in the civil action or actions. "Vexatious litigator" does 29  
not include a person who is authorized to practice law in the 30  
courts of this state under the Ohio Supreme Court Rules for the 31  
Government of the Bar of Ohio unless that person is representing 32  
or has represented self pro se in the civil action or actions. 33

(B) A person, the office of the attorney general, or a 34  
prosecuting attorney, city director of law, village solicitor, or 35  
similar chief legal officer of a municipal corporation who has 36  
defended against habitual and persistent vexatious conduct in the 37  
court of claims or in a court of appeals, court of common pleas, 38  
municipal court, or county court may commence a civil action in a 39  
court of common pleas with jurisdiction over the person who 40  
allegedly engaged in the habitual and persistent vexatious conduct 41  
to have that person declared a vexatious litigator. The person, 42  
office of the attorney general, prosecuting attorney, city 43  
director of law, village solicitor, or similar chief legal officer 44  
of a municipal corporation may commence this civil action while 45  
the civil action or actions in which the habitual and persistent 46  
vexatious conduct occurred are still pending or within one year 47  
after the termination of the civil action or actions in which the 48  
habitual and persistent vexatious conduct occurred. 49

(C) A civil action to have a person declared a vexatious 50  
litigator shall proceed as any other civil action, and the Ohio 51

Rules of Civil Procedure apply to the action.

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(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

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(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

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(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the court of claims or in a court of common pleas, municipal court, or county court courts specified in division (D)(1)(a) of this section prior to the entry of the order;

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(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the court of claims or in a court of common pleas, municipal court, or county court courts specified in division (D)(1)(a) of this section.

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(2) If the court of common pleas finds a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as

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the person represents one or more other persons in the person's  
 capacity as a licensed and registered attorney in a civil or  
 criminal action or proceeding or other matter in a court of common  
 pleas, municipal court, or county court or in the court of claims.  
 Division (D)(2) of this section does not affect any remedy that is  
 available to a court or an adversely affected party under section  
 2323.51 or another section of the Revised Code, under Civil Rule  
 11 or another provision of the Ohio Rules of Civil Procedure, or  
 under the common law of this state as a result of frivolous  
 conduct or other inappropriate conduct by an attorney who  
 represents one or more clients in connection with a civil or  
 criminal action or proceeding or other matter in a court of common  
 pleas, municipal court, or county court or in the court of claims.

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(3) A person who is subject to an order entered pursuant to  
 division (D)(1) of this section may not institute legal  
 proceedings in a court of appeals, continue any legal proceedings  
 that the vexatious litigator had instituted in a court of appeals  
 prior to entry of the order, or make any application, other than  
 the application for leave to proceed allowed by division (F)(2) of  
 this section, in any legal proceedings instituted by the vexatious  
 litigator or another person in a court of appeals without first  
 obtaining leave of the court of appeals to proceed pursuant to  
 division (F)(2) of this section.

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(E) An order that is entered under division (D)(1) of this  
 section shall remain in force indefinitely unless the order  
 provides for its expiration after a specified period of time.

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(F)(1) A court of common pleas that entered an order under  
 division (D)(1) of this section shall not grant a person found to  
 be a vexatious litigator leave for the institution or continuance  
 of, or the making of an application in, legal proceedings in the  
 court of claims or in a court of common pleas, municipal court, or

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county court unless the court of common pleas that entered that 115  
order is satisfied that the proceedings or application are not an 116  
abuse of process of the court in question and that there are 117  
reasonable grounds for the proceedings or application. If a person 118  
who has been found to be a vexatious litigator under this section 119  
requests the court of common pleas that entered an order under 120  
division (D)(1) of this section to grant the person leave to 121  
proceed as described in ~~this~~ division (F)(1) of this section, the 122  
period of time commencing with the filing with that court of an 123  
application for the issuance of an order granting leave to proceed 124  
and ending with the issuance of an order of that nature shall not 125  
be computed as a part of an applicable period of limitations 126  
within which the legal proceedings or application involved 127  
generally must be instituted or made. 128

(2) A person who is subject to an order entered pursuant to 129  
division (D)(1) of this section and who seeks to institute or 130  
continue any legal proceedings in a court of appeals or to make an 131  
application, other than an application for leave to proceed under 132  
division (F)(2) of this section, in any legal proceedings in a 133  
court of appeals shall file an application for leave to proceed in 134  
the court of appeals in which the legal proceedings would be 135  
instituted or are pending. The court of appeals shall not grant a 136  
person found to be a vexatious litigator leave for the institution 137  
or continuance of, or the making of an application in, legal 138  
proceedings in the court of appeals unless the court of appeals is 139  
satisfied that the proceedings or application are not an abuse of 140  
process of the court and that there are reasonable grounds for the 141  
proceedings or application. If a person who has been found to be a 142  
vexatious litigator under this section requests the court of 143  
appeals to grant the person leave to proceed as described in 144  
division (F)(2) of this section, the period of time commencing 145  
with the filing with the court of an application for the issuance 146  
of an order granting leave to proceed and ending with the issuance 147

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of an order of that nature shall not be computed as a part of an 148  
applicable period of limitations within which the legal 149  
proceedings or application involved generally must be instituted 150  
or made. 151

(G) During the period of time that the order entered under 152  
division (D)(1) of this section is in force, no appeal by the 153  
person who is the subject of that order shall lie from a decision 154  
of the court of common pleas or court of appeals under division 155  
(F) of this section that denies that person leave for the 156  
institution or continuance of, or the making of an application in, 157  
legal proceedings in the court of claims or in a court of appeals, 158  
court of common pleas, municipal court, or county court. 159

(H) The clerk of the court of common pleas that enters an 160  
order under division (D)(1) of this section shall send a certified 161  
copy of the order to the supreme court for publication in a manner 162  
that the supreme court determines is appropriate and that will 163  
facilitate the clerk of the court of claims and a clerk of a court 164  
of appeals, court of common pleas, municipal court, or county 165  
court in refusing to accept pleadings or other papers submitted 166  
for filing by persons who have been found to be a vexatious 167  
litigator under this section and who have failed to obtain leave 168  
to proceed under this section. 169

(I) Whenever it appears by suggestion of the parties or 170  
otherwise that a person found to be a vexatious litigator under 171  
this section has instituted, continued, or made an application in 172  
legal proceedings without obtaining leave to proceed from the 173  
appropriate court of common pleas or court of appeals to do so 174  
under division (F) of this section, the court in which the legal 175  
proceedings are pending shall dismiss the proceedings or 176  
application of the vexatious litigator. 177

**Sec. 2501.16.** (A) Each court of appeals may appoint one or 178

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more official shorthand reporters, law clerks, secretaries, and 179  
any other employees that the court considers necessary for its 180  
efficient operation. 181

The clerk of the court of common pleas, acting as the clerk 182  
of the court of appeals for the county, shall perform the duties 183  
otherwise performed and collect the fees otherwise collected by 184  
the clerk of the court of common pleas, as set forth in section 185  
2303.03 of the Revised Code, and shall maintain the files and 186  
records of the court. The clerk of the court of common pleas, 187  
acting as the clerk of the court of appeals for the county, may 188  
refuse to accept for filing any pleading or paper submitted for 189  
filing by a person who has been found to be a vexatious litigator 190  
under section 2323.52 of the Revised Code and who has failed to 191  
obtain leave from the court of appeals to proceed under that 192  
section. The overhead expenses pertaining to the office of the 193  
clerk of the court of common pleas that result from the clerk's 194  
acting as clerk of the court of appeals for the county, other than 195  
wages and salaries, shall be paid from the funds provided under 196  
sections 2501.18 and 2501.181 of the Revised Code. 197

Each officer and employee appointed pursuant to this section 198  
shall take an oath of office, serve at the pleasure of the court, 199  
and perform any duties that the court directs. Each shorthand 200  
reporter shall have the powers that are vested in official 201  
shorthand reporters of the court of common pleas under sections 202  
2301.18 to 2301.26 of the Revised Code. Whenever an opinion, per 203  
curiam, or report of a case has been prepared in accordance with 204  
section 2503.20 of the Revised Code, the official shorthand 205  
reporter immediately shall forward one copy of the opinion, per 206  
curiam, or report to the reporter of the supreme court, without 207  
expense to the reporter. 208

(B) The court of appeals may determine that, for the 209  
efficient operation of the court, additional funds are necessary 210

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to acquire and pay for special projects of the court, including, 211  
but not limited to, the acquisition of additional facilities or 212  
the rehabilitation of existing facilities, the acquisition of 213  
equipment, the hiring and training of staff, the employment of 214  
magistrates, the training and education of judges, acting judges, 215  
and magistrates, community service programs, and other related 216  
services. Upon that determination, the court by rule may charge a 217  
fee, in addition to all other court costs, on the filing of each 218  
case or cause over which the court has jurisdiction. 219

If the court of appeals offers a special program or service 220  
in cases of a specific type, the court by rule may assess an 221  
additional charge in a case of that type, over and above court 222  
costs, to cover the special program or service. The court shall 223  
adjust the special assessment periodically, but not retroactively, 224  
so that the amount assessed in those cases does not exceed the 225  
actual cost of providing the service or program. 226

All moneys collected under division (B) of this section shall 227  
be paid to the county treasurer of the county selected as the 228  
principal seat of that court of appeals for deposit into either a 229  
general special projects fund or a fund established for a specific 230  
special project. Moneys from a fund of that nature shall be 231  
disbursed upon an order of the court in an amount no greater than 232  
the actual cost to the court of a project. If a specific fund is 233  
terminated because of the discontinuance of a program or service 234  
established under division (B) of this section, the court may 235  
order that moneys remaining in the fund be transferred to an 236  
account established under this division for a similar purpose. 237

**Sec. 2503.17.** (A) Except as provided in division (B) and 238  
subject to division (C) of this section, the clerk of the supreme 239  
court shall charge and collect forty dollars, as a filing fee, for 240  
each case entered upon the minute book, including, but not limited 241



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to, original actions in the court, appeals filed as of right, and 242  
cases certified by the courts of appeals for review on the ground 243  
of conflict of decisions; and for each motion to certify the 244  
record of a court of appeals or for leave to file a notice of 245  
appeal in criminal cases. The filing fees so charged and collected 246  
shall be in full for docketing the cases or motions, making 247  
dockets from term to term, indexing and entering appearances, 248  
issuing process, filing papers, entering rules, motions, orders, 249  
continuances, decrees, and judgments, making lists of causes on 250  
the regular docket for publication each year, making and 251  
certifying orders, decrees, and judgments of the court to other 252  
tribunals, and the issuing of mandates. Except as provided in 253  
division (B) of this section, the party invoking the action of the 254  
court shall pay the filing fee to the clerk before the case or 255  
motion is docketed, and it shall be taxed as costs and recovered 256  
from the other party if the party invoking the action of the court 257  
succeeds, unless the court otherwise directs. 258

(B)(1) As used in this division, "prosecutor" has the same 259  
meaning as in section 2935.01 of the Revised Code. 260

(2) The clerk of the supreme court shall not charge to and 261  
collect from a prosecutor the forty-dollar filing fee prescribed 262  
by division (A) of this section when all of the following 263  
circumstances apply: 264

(a) In accordance with the Rules of Practice of the Supreme 265  
Court of Ohio, an indigent defendant in a criminal action or 266  
proceeding files in the appropriate court of appeals a notice of 267  
appeal within thirty days from the date of the entry of the 268  
judgment or final order that is the subject of the appeal. 269

(b) The indigent defendant fails to file or offer for filing 270  
in the supreme court within thirty days from the date of the 271  
filing of the notice of appeal in the court of appeals, a copy of 272  
the notice of appeal supported by a memorandum in support of 273

jurisdiction and other documentation and information as required 274  
by the Rules of Practice of the Supreme Court of Ohio. 275

(c) The prosecutor or a representative of the prosecutor 276  
associated with the criminal action or proceeding files a motion 277  
to docket and dismiss the appeal of the indigent defendant for 278  
lack of prosecution as authorized by the Rules of Practice of the 279  
Supreme Court of Ohio. 280

(d) The prosecutor states in the motion that the forty-dollar 281  
filing fee does not accompany the motion because of the 282  
applicability of this division, and the clerk of the supreme court 283  
determines that this division applies. 284

~~(C) Under the circumstances described in sections 2969.21 to 285  
2969.27 of the Revised Code, the clerk of the supreme court shall 286  
charge the fees and perform the other duties specified in those 287  
sections. 288~~

**Sec. 2969.21.** As used in sections 2969.21 to 2969.27 of the 289  
Revised Code: 290

(A) "Clerk" means the elected or appointed clerk of any court 291  
in this state, except the court of claims or the supreme court, in 292  
which an inmate has commenced a civil action against a government 293  
entity or employee or has filed an appeal of the judgment or order 294  
in a civil action of that nature. 295

(B)(1) "Civil action or appeal against a government entity or 296  
employee" means any of the following: 297

(a) A civil action that an inmate commences against the 298  
state, a political subdivision, or an employee of the state or a 299  
political subdivision in a court of common pleas, court of 300  
appeals, county court, or municipal court ~~or in the supreme court;~~ 301

(b) An appeal of the judgment or order in a civil action of 302  
the type described in division (B)(1)(a) of this section that an 303

inmate files in a court of appeals ~~or in the supreme court.~~ 304

(2) "Civil action or appeal against a governmental entity or 305  
employee" does not include any civil action that an inmate 306  
commences against the state, a political subdivision, or an 307  
employee of the state or a political subdivision in the court of 308  
claims or the supreme court or an appeal of the judgment or order 309  
entered by the court of claims in a civil action of that nature, 310  
that an inmate files in a court of appeals or the supreme court. 311

(C) "Employee" means an officer or employee of the state or 312  
of a political subdivision who is acting under color of state law. 313

(D) "Inmate" means a person who is in actual confinement in a 314  
state correctional institution or in a county, multicounty, 315  
municipal, municipal-county, or multicounty-municipal jail or 316  
workhouse or a releasee who is serving a sanction in a violation 317  
sanction center. 318

(E) "Inmate account" means an account maintained by the 319  
department of rehabilitation and correction under rules adopted by 320  
the director of rehabilitation and correction pursuant to section 321  
5120.01 of the Revised Code or a similar account maintained by a 322  
sheriff or any other administrator of a jail or workhouse or by 323  
the administrator of a violation sanction center. 324

(F) "Political subdivision" means a county, township, city, 325  
or village; the office of an elected officer of a county, 326  
township, city, or village; or a department, board, office, 327  
commission, agency, institution, or other instrumentality of a 328  
county, township, city, or village. 329

(G) "State" has the same meaning as in section 2743.01 of the 330  
Revised Code. 331

(H) "State correctional institution" has the same meaning as 332  
in section 2967.01 of the Revised Code. 333

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(I) "Violation sanction center" means an alternative residential facility that houses releasees who have violated a post-release control sanction or the terms and conditions of parole or of a conditional pardon and that is operated pursuant to section 2967.141 of the Revised Code.

**Sec. 2969.22.** (A)(1) Whenever an inmate commences a civil action or appeal against a government entity or employee on or after October 17, 1996, all of the following apply:

(a) The clerk of the court in which the civil action or appeal is filed shall notify the inmate and either the department of rehabilitation and correction, the sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center, whichever has physical custody of the inmate, of the deductions and procedures required by divisions (A) to (D) of this section, and shall identify in the notice the civil action or appeal by case name, case number, name of each party, and the court in which the civil action or appeal was brought.

(b) The clerk of the court in which the civil action or appeal is filed shall charge to the inmate either the total payment of the requisite fees that are described in section 2303.20 of the Revised Code or that otherwise are applicable to actions or appeals filed in that court or, if the inmate has submitted an affidavit of indigency, all funds in the inmate account of that inmate in excess of ten dollars, and shall notify the inmate of the charge.

(c) Unless the amount charged under division (A)(1)(b) of this section constitutes the total amount of the requisite fees, all income in the inmate account of the inmate shall be forwarded to the clerk of the court during each calendar month following the month in which the inmate filed the civil action or appeal until

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the total payment of the requisite fees occurs. The first ten  
dollars in the inmate account of the inmate each month shall be  
excluded from that forwarding requirement. If multiple charges are  
assessed to an inmate account under this division, charges shall  
be calculated on the basis of the inmate's total income and shall  
be paid as described in this division until the charges exceed one  
hundred per cent of nonexcluded funds in the inmate account;  
thereafter, all unpaid fees shall be paid simultaneously from the  
inmate account of the inmate to the appropriate court or courts  
pro rata.

(d) Upon receipt of the notice of the requisite fees payable  
pursuant to divisions (A)(1)(a) to (c) of this section, the  
department, sheriff or other administrator of the jail or  
workhouse, or the administrator of the violation sanction center  
shall deduct from the inmate account of the inmate and transmit to  
the clerk of the appropriate court the appropriate amounts of the  
requisite fees as described in divisions (A)(1)(b) and (c) of this  
section.

(2) The procedures described in this section apply  
notwithstanding any contrary court rule or the filing of a poverty  
affidavit.

(3) This section does not limit the clerk of a court of  
common pleas, court of appeals, county court, or municipal court  
~~or the clerk of the supreme court~~ from considering any other  
inmate resources separate and apart from an inmate account of an  
inmate in evaluating the inmate's ability to pay court costs,  
fees, awards, or other amounts.

(B) An inmate who commences a civil action or appeal against  
a governmental entity or employee on or after October 17, 1996,  
shall be considered to have authorized payment as the plaintiff in  
the civil action or the appellant in the appeal of the requisite  
fees that are described in section 2303.20 of the Revised Code or

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that otherwise are applicable to actions or appeals filed in the  
court in which the action or appeal is filed, using the procedures  
set forth in this section, until total payment of the requisite  
fees.

(C)(1) If an inmate files a civil action or appeal against a  
government entity or employee on or after October 17, 1996, upon  
the termination of the civil action or appeal, the clerk of the  
court in which the action or appeal was filed shall notify the  
department of rehabilitation and correction, the sheriff or other  
administrator of the jail or workhouse, or the administrator of  
the violation sanction center of the outcome of the civil action  
or appeal and shall identify the civil action or appeal by case  
name, case number, name of each party, and the court in which the  
civil action or appeal was brought.

(2) The department of rehabilitation and correction, the  
sheriff or other administrator of a jail or workhouse, or the  
administrator of the violation sanction center shall keep in the  
inmate's file a record of the information supplied by the clerk of  
the appropriate court under division (C)(1) of this section.

(D) If an inmate is to be released from confinement prior to  
the total payment of the requisite fees as provided in divisions  
(A) and (B) of this section, the department of rehabilitation and  
correction, the sheriff or other administrator of the jail or  
workhouse, or the administrator of the violation sanction center,  
whichever has physical custody of the inmate, shall inform the  
clerk of the court of common pleas, court of appeals, county  
court, or municipal court, ~~or supreme court~~ of the release. The  
department, sheriff or other administrator of the jail or  
workhouse, or administrator of the violation sanction center shall  
deduct from the inmate account of the inmate in the month of the  
inmate's release from custody an amount sufficient to pay the  
remainder of the requisite fees owed and transmit that amount to

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the clerk. If there are insufficient funds in the inmate account 429  
of the inmate to totally pay the requisite fees, the department, 430  
sheriff or other administrator of the jail or workhouse, or 431  
administrator of the violation sanction center shall deduct the 432  
balance of the account and transmit that amount to the clerk. The 433  
clerk shall inform the court of the amount of the requisite fees 434  
still owed. 435

**Sec. 2969.25.** (A) At the time that an inmate commences a 436  
civil action or appeal against a government entity or employee, 437  
the inmate shall file with the court an affidavit that contains a 438  
description of each civil action or appeal of a civil action that 439  
the inmate has filed in the previous five years in any state or 440  
federal court. The affidavit shall include all of the following 441  
for each of those civil actions or appeals: 442

(1) A brief description of the nature of the civil action or 443  
appeal; 444

(2) The case name, case number, and the court in which the 445  
civil action or appeal was brought; 446

(3) The name of each party to the civil action or appeal; 447

(4) The outcome of the civil action or appeal, including 448  
whether the court dismissed the civil action or appeal as 449  
frivolous or malicious under state or federal law or rule of 450  
court, whether the court made an award against the inmate or the 451  
inmate's counsel of record for frivolous conduct under section 452  
2323.51 of the Revised Code, another statute, or a rule of court, 453  
and, if the court so dismissed the action or appeal or made an 454  
award of that nature, the date of the final order affirming the 455  
dismissal or award. 456

(B) If an inmate who files a civil action in a court of 457  
common pleas, court of appeals, county court, or municipal court 458  
~~or in the supreme court~~ or an inmate who files an appeal from a 459

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judgment or order in a civil action in any of those courts has 460  
filed three or more civil actions or appeals of civil actions in a 461  
court of record in this state in the preceding twelve months or 462  
previously has been subject to the review procedure described in 463  
this division, the court may appoint a member of the bar to review 464  
the claim that is the basis of the civil action or the issues of 465  
law that are the basis of the appeal and to make a recommendation 466  
regarding whether the claim asserted in the action or the issues 467  
of law raised in the appeal are frivolous or malicious under 468  
section 2969.24 of the Revised Code, any other provision of law, 469  
or rule of court. 470

(C) If an inmate who files a civil action or appeal against a 471  
government entity or employee seeks a waiver of the prepayment of 472  
the full filing fees assessed by the court in which the action or 473  
appeal is filed, the inmate shall file with the complaint or 474  
notice of appeal an affidavit that the inmate is seeking a waiver 475  
of the prepayment of the court's full filing fees and an affidavit 476  
of indigency. The affidavit of waiver and the affidavit of 477  
indigency shall contain all of the following: 478

(1) A statement that sets forth the balance in the inmate 479  
account of the inmate for each of the preceding six months, as 480  
certified by the institutional cashier; 481

(2) A statement that sets forth all other cash and things of 482  
value owned by the inmate at that time. 483

**Section 2.** That existing sections 2323.52, 2501.16, 2503.17, 484  
2969.21, 2969.22, and 2969.25 of the Revised Code are hereby 485  
repealed. 486