

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 
- Committee Hearings ... CH
- 
- Committee Reports ... CR
- 
- Executive Sessions ... ES
- 
- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 97hr\_JCR-AR\_Misc\_pt30b\_SofC
- Record of Comm. Proceedings ... RCP
-

JCRAR  
1998 Service of  
Lawsuits

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SCOTT KONITZER-105033  
WAUPUN CORRECTIONAL INSTITUTION  
PO BOX 351  
WAUPUN WI 53963-0351

NOV 11 1997

11/7/97

SENATOR RICHARD A. GROBSCHMIDT, DIS 7  
PO BOX 7882  
MADISON WI 53707-7882

RE: Dept of Corrections Proposed revisions to administrative code  
Chapter DOC 308.

Dear Senator:

Dear Senator:

Greetings. I am writing to you in hopes that you will oppose the department of corrections efforts to change the above code and make it even more restrictive and punitive. By its very nature it is suppose to be non-punitive, but this is not being complied with, and to my knowledge, has not been at any time.

Administrative confinement is the department of corrections method of handling inmates that it deems dangerous. It is strictly a non-punitive status, and inmates so confined are suppose to have property and privledges consistant with inmates in the general prison population. The Prison staff circumvent this part of the rule by claiming that because inmates in administrative confinement are housed with inmates in a punitive status, they must then restrict the property and privledges of inmates in non-punitive administrative confinement. This is, and has , always been the case. They have never confined administrative confinement inmates in any other fashior, and I believe this to be deliberate, so that the above deprivations can take place, and constitute a form of punishment of the inmate , without actually going on the record as a punishment.

There are several other portions of the above code taht the staff at this prison do not comply with, only following the part of the code which allows them to place an inmate in the above status and ignoring the rest of the code. I realize that this is a serious allegation. It is, in my opinior, a fact. For the record I describe it as my feeling, rather than accuse any particular individual. The DOC has a means for dealing with inmate whistle blowers. It is a rule in DOC 303 entitled, " lying about staff." It has a chilling effect on inmates who would make claims about staff wrongdoing. For the above reason, I do not claim this as fact. Read between the lines if you will...

Administrative confinement is a very inhumane means of confinement. For long periods of time, it in NO WAY serves the public interest. I implore you to vote against any new changes in DOC-308 and ask that you order or vote to have some portions of this code to be made less restrictive, and in such a way that it clearly does not constitute punishment. As the code is practiced now, it is clearly punishing, and to suggest that it is not is not only

ludicrous, but an insult to anyone of even average intellect.

For instance: Inmates in admin. cor. are not allowed any contact whatsoever with loved ones. Nor are they allowed any meaningful social contact. Not just for a proscribed period of time; but indefinitely. If that is not punishment per se, I don't know what is. Simply saying that a rule is "non-punitive" does not necessarily make it so. I feel punished, and believe that I am being punished.

There are a number of other issues regarding DOC 308, and non-compliance with sections thereof. I would very much like to discuss this matter with you prior to any legislative vote on the proposed changes in the above code. I am hoping that you will vote against it and urge your fellows to do the same. A telephone call could be arranged by contacting my social worker here at the prison to set up a time for the call. His name is: MIKE CARROTT  
SOCIAL SERVICE DEPT.

I would very much appreciate a response from you as well as any language on the proposed revisions to the above code. I am asking you this because such revisions apply to me personally. I am asking that you please send me a card or note at the very least to let me know that you have gotten my letter. My reason for this is that in the past, staff at this facility have thrown away inmate incoming and outgoing mail. This is a matter of record. Perhaps you heard about that incident. In any case, that is why I am requesting a receipt of my letter notice.

I thank you very much for your time and any help or information that you can offer on this matter.

Sincerely,

Scott Koritzer



JAN 22 1998

January 20, 1998

Dear Senator Grobschmidt / JCRAR:

Enclosed Please find a Summons, a Petition for Review of Declaratory Ruling and/or Petition for Declaratory Judgment, and, an Order Waiving Costs and Fees in an action entitled State ex rel. Wisconsin Charles Downing v. Michael Sullivan, 98-CV-66 (Dane County).

I ask that you return letter to verify that the enclosed is properly served on the JCRAR.

I thank you for your time and should you have any questions or concerns, please contact me.

Sincerely,  
Charles Downing

Charles Downing #99690  
Waupun Comm. Inst.  
P.O. Box 351  
Waupun, WI 53983-0351

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

Room 404 • Hamilton  
Madison, WI 53707  
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIRMAN

Room 125 West • State Capitol  
Madison, WI 53703  
Phone: 608-264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

January 30, 1998

Charles Downing, #99690  
Waupun Correctional Institution  
P.O. Box 351  
Waupun, WI 53963-0351

Dear Mr. Downing:

You recently wrote requesting verification of your serving the Joint Committee for Review of Administrative Rules (JCRAR) with a copy of a summons and complaint in a legal action you have commenced.

We are able to confirm your providing the committee with a copy of your complaint. As is the practice of the JCRAR, members of the committee were made aware of the complaint. We have enclosed a copy of a memorandum dated January 30, 1998, from the co-chairs that was sent to members of the joint committee.

We hope this information is useful.

Sincerely,

RICHARD GROBSCHMIDT  
Senate Co-Chair

GLENN GROTHMAN  
Assembly Co-Chair

RG:GG: js

Enclosure

## MEMORANDUM

To: Members, JCRAR  
From: Senator Richard Grobschmidt, Co-Chairman  
Representative Glenn Grothman, Co-Chairman  
Date: January 30, 1998  
Re: Service of Lawsuit

Pursuant to s. 227.40(5), Stats, the Joint Committee for Review of Administrative Rules has been served with notice in the matter of *Charles Downing #99690 v. Michael Sullivan, Secretary, Department of Corrections*. A copy of the lawsuit is attached for your review.

Subchapter III of Chapter 227, Stats, establishes an action for declaratory judgment in the circuit court for Dare County to be the primary means for judicial review in a dispute concerning the validity of an administrative rule. Subject to the approval of the Joint Committee on Legislative Organization, the Joint Committee for Review of Administrative Rules may choose to be made a party to the suit, and thereby be entitled to be heard.

If you are interested in a further pursuit of the rights of the JCRAR under this suit, please forward your request in writing to the offices of the co-chairmen of the committee.

GERALD C. NICHOL  
CIRCUIT COURT, BR. 9  
DANE

State of Wisconsin : Circuit Court : County

JAN 21 1998

Name: THOMAS W. REIMANN  
POST OFFICE BOX 351  
Address: WAUPUN, WISCONSIN 53963

97CV3331

City, State, Zip:

File No.

97IP0175

Plaintiff,

SUMMONS

vs.

DECLARATORY JUDGMENT

Name: MICHAEL L. SULLIVAN  
STEPHEN PUCKETT &  
Address: WISCONSIN DEPARTMENT OF CORRECTIONS  
149 EAST WILSON STREET

(Case Classification Type)

30701

City, State, Zip: MADISON, WISCONSIN 53707-7925  
Defendant.

(Code No.)

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within ~~(20)~~ (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is:

Clerk of Circuit Court

DANE

County Courthouse

210 MARTIN LUTHER KING BOULEVARD

MADISON WISCONSIN 53709

State of Wisconsin  
County of Dane  
I hereby certify this is a true  
copy of the original Summons  
and Complaint, filed in my office

and to THOMAS W. REIMANN  
plaintiff's attorney, whose address is:

POST OFFICE BOX 351

Attest: *[Signature]*  
Clerk of Courts  
by Deputy Clerk

WAUPUN WISCONSIN 53963

You may have an attorney help or represent you.

If you do not provide a proper answer within ~~(20)~~ (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 6th day of June, 1998

Thomas Reimann or \_\_\_\_\_  
Plaintiff Plaintiff's Attorney's

State Bar No. \_\_\_\_\_

Address: POST OFFICE BOX 351  
WAUPUN, WISCONSIN 53963

Phone: \_\_\_\_\_



STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

THOMAS W. REIMANN  
POST OFFICE BOX 351  
WAUPUN, WISCONSIN 53963,

97CV3331  
97IP0175

Plaintiff,

-v-

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

MICHAEL L. SULLIVAN,  
STEPHEN PUCKETT and  
WISCONSIN DEPARTMENT OF CORRECTIONS,  
149 EAST WILSON STREET  
MADISON, WISCONSIN 53707-7925

DECLARATORY JUDGMENT  
30701

DOC SECRETARY & DIRECTOR  
OF THE OFFICE OF OFFENDER  
CLASSIFICATION, WISCONSIN  
DEPARTMENT OF CORRECTIONS,

IN THEIR OFFICIAL AND  
INDIVIDUAL CAPACITIES,

Defendants,

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW the plaintiff, Thomas W. Reimann, and as for  
a cause of action alleges and shows to this court as follows:

J U R I S D I C T I O N

This action is commenced pursuant to §§ 227.40(1) and  
806.04(2), Wisconsin State Statutes. Plaintiff seeks  
declaratory and injunctive relief. Plaintiff also demands  
a trial by a jury of twelve (12) persons;

P A R T I E S

1. Plaintiff Thomas W. Reimann is a State of Wisconsin  
prisoner currently confined at the Waupun Correctional In-  
stitution. ("WCI"). His address is: Post Office Box 351,  
Waupun, Wisconsin 53963;

2. Defendant Michael L. Sullivan ("Sullivan") is employed by the State of Wisconsin, Department of Corrections, ("DOC") as the Secretary of the DOC;

3. Defendant Stephen Puckett ("Puckett") is employed by the State of Wisconsin, DOC, as the Director of the Office of Offender Classification;

4. Defendant Wisconsin Department of Corrections is a State of Wisconsin agency organized pursuant to Chapter 301 et seq, Wisconsin State Statutes;

5. All defendants' have the address of : 149 East Wilson Street, Madison, Wisconsin 53707-7925;

6. All defendants' acted within the scope of their employment at all times herein mentioned;

7. All defendants' are sued in their official and individual capacities;

## F A C T S

### COUNT I

8. Plaintiff is serving an aggregate sentence of 36 years and his custody level is rated as "maximum security" at present time;

9. Plaintiff is eligible for parole after serving  $\frac{1}{4}$  of his sentence; (cf. § 304.06(1)(b), Stats.)

10. Plaintiff's initial parole eligibility date is April 13, 1999;

11. Plaintiff has been incarcerated since 1990 and has maintained an exemplary conduct record;

12. Although there are no available programs that are responsive to plaintiff's "A & E Treatment Needs" offered in a maximum security institution, defendants' continue to warehouse the plaintiff in a maximum security institution solely because of his "sentence structure" as defined by the "DOC Risk Rating Guide";

13. As the DOC Secretary, Sullivan implemented the "DOC Risk Rating Guide" to determine when a prisoner should be considered for a reduction in his/her custody level and/or security classification;

14. The "DOC Risk Rating Guide" mandates that all DOC prisoners' serving sentences in excess of 15 years serve one half of their sentences in a maximum security prison;

15. The "DOC Risk Rating Guide" has not been promulgated and adopted in compliance with § 227.40(4)(a), Stats., and is therefore invalid;

16. If plaintiff was serving a life sentence for murder he could be considered for a reduction in custody level as much as seven full years prior to his initial parole eligibility date; (cf. § DOC 302.14(3)(b)3);

17. The WCI Program Review Committee does not consider any relevant material prior to considering a WCI prisoner for a reduction in custody level, and instead relies solely on the prisoner's "sentence structure" to retain him as a maximum security prisoner;

18. The "DOC Risk Rating Guide" has in fact, made the WCI Program Review Committee the de facto parole board;

19. Plaintiff has exhausted his administrative remedies through the ICRS to no avail (See ICI GB 1411-96);

C O U N T        II

20. § 301.048, Stats., as related to eligibility for the DOC's Department of Intensive Sanctions Program mandates that to be eligible for DIS the prisoner must be "serving a felony sentence not punishable by life imprisonment";

21. Plaintiff is serving a felony sentence not punishable by life imprisonment;

22. The WCI Program Review Committee and Puckett refuse to consider plaintiff for an administrative transfer to the DIS Program because he has a conviction for delivery of a controlled substance;

23. On March 7, 1994 Puckett authored a "memorandum" denying an administrative transfer to DIS for anyone who was convicted of a "drug dealing offense";

24. Despite the enactment of Puckett's "memo", the DOC does consider certain prisoners' convicted of drug dealing for administrative transfers to DIS;

25. § DOC 333.02 states in relevant part:

"...This chapter and other administrative rules referenced in this chapter are the **only** administrative rules of the department that apply to inmate's in the intensive sanctions program..." (emphasis added)

26. § DOC 333.04 related to "Eligibility for MS/ DIS classification" makes no reference to drug dealers being precluded from DIS eligibility;

26. Puckett's "memo" was not promulgated and adopted in compliance with § 227.40(4)(a), Stats., and is therefore invalid;

27. Plaintiff has exhausted his administrative remedies via the ICRS, to no avail; (See ICI GB 1511-94);

#### FIRST CAUSE OF ACTION

As a proximate result of the conduct complained about in Count One, the plaintiff has been injured, and continues to be injured as follows:

- a. The DOC "Risk Rating Guide" effectively constitutes ex post facto punishment as proscribed by Article 1 & 10 of the United States Constitution & Article 1, § 12 of the Wisconsin Constitution as it has effectively lengthened the duration of plaintiff's confinement and has made his punishment much more onerous than when plaintiff was sentenced in 1990;
- b. The DOC "Risk Rating Guide" violates plaintiff's right to Equal Protection and Due Process as mandated by the 6th & 14th Amendments to the United States Constitution as it confers preferential treatment to murderers and prisoners' serving a sentence of 15 years and under while lacking any rational justification to do so;

#### SECOND CAUSE OF ACTION

As a proximate result of the conduct complained about in Count Two, the plaintiff has been injured, and continues to be injured as follows:

- a. Puckett's memo violates plaintiff's right to Equal Protection and Due Process as guaranteed by the 6th & 14th Amendments to the United States Constitution as it was enacted specifically to deny DIS transfer to drug dealers while allowing DIS transfer to violent criminals;

DEMAND FOR RELIEF

WHEREFORE, the plaintiff respectfully requests that this court grant him the following relief:

- a. Issue a declaratory judgment rendering the DOC "Risk Rating Guide" and Puckett's "Memo" to be null and void;
- b. Issue a permanent injunction enjoining the defendants' from further continuing to use the DOC "Risk Rating Guide" and Puckett's memo at any time during the pendency of these proceedings and at all times thereafter;
- c. Plaintiff further demands a hearing to contest the validity of these "rules" as mandated by § 227.42(1), Stats.;
- d. Any other such and further relief as this court deems just and equitable under the circumstances;

Respectfully Submitted,

*Thomas Reimann*

Thomas W. Reimann pro-se  
Post Office Box 351  
Waupun, Wisconsin 53963

DATED: This 6th day of June, 1997;

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

Thomas W. Reimann,  
x rel ST WI

vs.

Michael Sullivan, et al.

CASE NO. 97 CV 3331

**ORDER WAIVING COSTS AND FEES (Prisoner/Pro-Se)**

Upon reading and filing the foregoing affidavit of Thomas Reimann pro se, in the above entitled action, and on motion of the petitioner;

IT IS ORDERED that the petitioner Thomas Reimann pro se, be and hereby is permitted to commence or defend the above entitled action without first posting security for costs, or without first making payment for service and filing fee; and

IT IS FURTHER ORDERED that the Clerk of said Circuit Court accept for filing and so file all pertinent and relative papers without costs therein; and

IT IS FURTHER ORDERED that the Sheriff serve all papers herein without first requesting payment of a service fee; and

IT IS FURTHER ORDERED that should costs be recovered in this action, then costs shall first be applied to any and all costs herein waived.

Dated this 26<sup>th</sup> day of December, 1997.

BY THE COURT

Thomas Reimann  
Circuit Judge

Senator Weeden  
JOINT COMMITTEE FOR ADMIN. RULES  
Room 37, South State Capitol  
P.O. BOX 7882  
MADISON, Wis. 53707-7882

RE: **MOORE v. Mc CAUGHTRY**, Case NO. **97-CV-543**  
(SUMMONS & COMPLAINT) Dodge County.

Senator Weeden,


Enclosed please find the Plaintiff's  
"SUMMONS & COMPLAINT", which has been filed with the Dodge County  
Courthouse Clerk Richard A. Thieme, 105 N. Main Street, Juneau, Wis.  
53039-1056, against the Defendant's **GARY R. Mc CAUGHTRY** and Lt.  
**HUATAMAKI**, AT WAUPUN CORRECTIONAL INSTITUTION, P.O. BOX 351, Waupun,  
Wis. 53963-0351, regarding the Promulgating of Rules of Doc 303 or  
enforcing such rules, which conflict with State Law or is a  
Prohibition of the **Ex Post Facto** provision of the Article 1, sec.9  
& 10 United States Constitution.

Thanks for your time, service and Consideration.

Dated 24th day of JANUARY, 1998

CC: Senator Weeden, (JCRAR)  
JAMES W. MOORE #82877

RESPECTFULLY SUBMITTED

  
JAMES W. MOORE #82877  
IN PERSON/ BOX 351  
WAUPUN, WIS. 53963-0351



\*

\* DODGE COUNTY COURTHOUSE \*  
\* 105 N. MAIN STREET \*  
\* JUNEAU, WIS. 53039-1056 \*

CIVIL ACTION

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

Code No. 30707, 30107,

\* MEMORANDUM OF LAW \*  
\*\*\*\*\*

Pursuant to ss.801.02 (5)STATS.

HONORABLE JOSEPH E. SCHULTZ

Before proceeding with the enclosed - Petition - it must be clarified that the Court in its review must take JUDICIAL NOTICE, pursuant to ss.902.01 (4) Wis. Stats. when requested of the Court and - JUDICIAL REVIEW - and STATUTORY REQUIREMENT, pursuant to ss.227.40 Wis. Stats., when it is offered on demand, therein, or is prescribed. Wherein ss.801.02 (5) Wis. Stats., allows the additional option of using an order to shorten the time for filing a response to the Complaint in lieu of a Summons.

This option is for emergency situation, when the case may be moot before a response would be fixed. (**Plaintiff's request that Court issue an order for the defendants to respond within 25 days less than the time fixed**). Wherein the plaintiff have a protected right to procedural due process where regulation framework governing the Administration of a State Prison, in giving rise to a right to due process by going beyond simple procedural guidelines and by using language of an unmistakably mandatory character requiring that certain procedures must be employed.

ADMINISTRATIVE REMEDIES EXHAUSTED

This is all concerning a Conduct Report #815297-381, the Plaintiff received on 3-2-97. The Plaintiff went on a full due process hearing on 3-10-97, which was Postpone and reheld on 3-17-97, the Presented Oral testimony and a written statement; the Plaintiff was found guilty by the defendant's and was given **3 days Adjustment Segregation** and **120 days Program Segregation**. The Plaintiff Appealed the decision of the defendants on 3-27-97, to defendant **Gary R. Mc Caughtry**, Warden/Superintendent, who Affirmed the defendants decision on 4-4-97 and being the Final decisionmaker thereto.

The Plaintiff submitted a **Notice of Claim** to the **ATTORNEY GENERAL OFFICE** on 8-13-97.

Thereby having exhausted all his Administrative Remedies and thereby brings forth this Civil Action.

Dated 18<sup>th</sup> day of SEPTEMBER, 1997

RESPECTFULLY SUBMITTED

James W. Moore  
s/ JAMES W. MOORE #82877  
IN PERSON/BOX 351  
WAUPUN, WIS. 53963-0351

This instrument was sworn before me  
On 18<sup>th</sup> day of September, 1997  
My Commission Expires: 8-23-98,

M. Welter  
Notary Public/State of Wisconsin

JAMES W. MOORE,

Plaintiff

SUMMONS

V.

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

GARY R. Mc CAUGHTRY, Warden

Code No. 30707, 30107

Lt. HUATAMAKI,

Defendant (s)

STATE OF WISCONSIN TO: Each person named above as a defendant:

**YOU ARE HEREBY NOTIFIED THAT:** the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent or delivered to the Court, whose address is DODGE COUNTY COURTHOUSE, 105 N. MAIN STREET, JUNEAU, WIS. 53039-1056 and to the Plaintiff whose address is WAUPUN CORRECTIONAL INSTITUTION, P.O. BOX 351, WAUPUN, WIS. 53963-0351.

You may have an Attorney help or represent you. If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: 18<sup>th</sup> day of SEPTEMBER, 1997

RESPECTFULLY SUBMITTED

This instrument was sworn before me  
On 18<sup>th</sup> day of September, 1997  
My Commission Expires: 8-23-98,

[Signature]  
Notary Public/State of Wisconsin

[Signature]  
JAMES W. MOORE #82877  
IN PERSON/BOX 351  
WAUPUN, WIS. 53963-0351

JAMES W. MOORE,

Plaintiff,

CIVIL ACTION

V.

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

GARY R. Mc CAUGHTRY, Warden  
Lt. HUATAMAKI,Code No. 30707,30107

Defendant (s)

The plaintiff in the above-entitled action, in his **-NATURAL PERSON-** Capacities commences this Civil action against the Defendant's in their individual and personal Capacities for acts and omissions consistent, with ss.801.05 (2)(3) Wis. Stats., Title 42 USC § 1983, Inconjunction, with extraordinary relief in the nature of a **Writ of Certiorari**, pursuant to ss.801.02 (5) Wis. Stats., and ss.781.01 Wis. Stats. contrary to their office and employment acting under **-COLOR OF LAW-** and as a result the plaintiff (Both) Person's and properties was injured thereby.

Costs or providing security for such Fee's and cost pursuant to ss.814.29 (1) Wis. Stats. from the Affidavit of Indigency accompanying the plaintiff's proposed complaint should be concluded that the plaintiff in unable to pay the fee's and cost of instituting this Civil action.

JURISDICTION

This Court pursuant to Title 28 USC § 1343 (a)(2)(3); Article 7 § 8 Wis. Const. in issuing a 42 USC § 1983 with extraordinary relief in the nature of **WRIT OF CERTIORARI**, pursuant to ss.781.01 Wis. Stats. inconjunction with ss.801.02 (5) Wis. Stats., and with Article 3 § 2, cl. 1 USC; the Court shall exercise its judicial powers over all cases arising under the constitution and laws of this land, affecting person's and things.

PLAINTIFF'S

**JAMES W. MOORE**, having had his 4th,5th,8th & 14th Amendment rights violated , who is a **-NATURAL BORN PERSON-** an resident of the United States residing at WAUPUN CORRECTIONAL INSTITUTION, P.O. BOX 351,WAUPUN, Wis. 53963-0351.

DEFENDANT'S

**GARY R. Mc CAUGHTRY**, Warden/Superintendent and **Lt. HUATAMAKI**, Hearing Officer, all citizens of the United States, employed by the State of Wisconsin, DEpartment of Corrections and responsible for the discipline, safety & welfare of all residents & prisoners at the WAupun Correctional Institution, P.o. BOX 351, Waupun, Wis. 53963-0351, whose address is

the same.

JURY DEMANDED BY TRIAL

Pursuant to Article 3 § 2, cl. 1 USC; Article 1 § 5 Wis. Const. in conjunction with ss.805.01 (2) Wis. Stats. the plaintiff demand a ~~-TRIAL BY JURY-~~ of (6) and pursuant to this the Court shall extend its ~~-JUDICIAL POWERS-~~ over all Civil and Criminal matters arising under the laws of this land and Constitution.

PETITION

1. That on 3-10-97 & 3-17-97 the defendants **LT. Huatamaki** and **GARY R. Mc CAUGHTRY**, arbitrary violated the plaintiff's 4th, 8th and 14th Amendment right U.S.C. to procedural due process and Equal Protection of the law, in disciplinary action on Conduct Report #815297-381, as the defendants failed to abide by its own rules pursuant to Doc 303.76 (1) **Wis. Adm. Code**, in preserving for the record the Plaintiff's Oral objections to the Committee conducting the disciplinary hearing in violation of Doc 303.76 (3) in conjunction with Doc 303.81 (7)(9) **Wis. Adm. Code**, wherein the defendant's held the plaintiff full due process hearing in violation of the 2 working day time limit after plaintiff received the second **Notice of Hearing**, as mandated by Doc 303.81 (7)(9)-**Appendix** at page 115, and

2. The Defendants **Huatamaki & Mc Caughtry**, on 3-10-97, acted arbitrary in violating the plaintiff's 8th and 14th Amendment rights USC, in disciplinary action on Conduct Report #815297-381, as the defendants failed to abide by its own rules pursuant to Doc 303.76 (5)(6) in conjunction with Doc 303.81 (7m)(9) - **Appendix** at page 115, in providing the plaintiff's witness'es a Copy of the **Notice of Hearing**, and where the defendants acted outside its jurisdiction, when it arbitrary Postponed the plaintiff's full due process hearing because the Hearing Officer failed to provide such witness'es with **Notice of Hearing** and where the plaintiff's was not presented at the hearing, wherein the Doc 303.76 Wis. Adm. Code does not provide the defendant **Lt. Huatamaki** with the authority to Postpone the plaintiff's without the plaintiff's consent for witness'es not being present;

3. That On 3-10-97 & 3-17-97 the defendants **Lt. Huatamaki** and **Gary R. MC caughtry**, arbitrary violated the plaintiffs 8th & 14th Amendment rights USC. to procedural due process wherein the defendant's

HEARING was held without the SEcurity Director indicating into the recorded of the disciplinary action his reasons for Up-Grading the plaintiff's conduct REport #815297-381, to a major rule infraction as mandated by Doc 303.68 (4) Wis Adm. Code, thereby failing to follow its own rules;

4. THAT the defendant's HUatamaki and Mc CAUGHTRY, arbitrary violated the plaintiff's rights to procedural due process as the the defendant's placed plaintiff in Adjustment Segregation and Program SEgregation, wherein the defendant's lacked jurisdiction to place plaintiff in such confinement wherein the provision of ss.946.73 Wis. Stats. also governs any violation of lawful rule's made pursuant to state law law (Doc 303) GOVRNING the State Penal INstitution;

5. THAT the defendant's on 3-17-97, arbitrary placed the plaintiff under the prohibition of a EX POST FACTO - BILL OF ATTAINDER LAW, wherein the Doc 303.24 & Doc 303.28 Wis. Adm. Code, penalties increase's the penalty of ss.946.73 Wis. Stats. penalty for the same offense;

6. That the defendant's on 3-17-97, (Mc Caughtry & Huatamaki) ARBITRARY enforced a rule promulgated by the DEpartment of Corrections upon the plaintiff person's that conflicted with the State law provision of ss.946.73 Wis. Stats., to which the plaintiff's 14th Amendment right to due process was violated wherein the defendants failed to follow their own rules pursuant to ss.227.10 (2) Stats. on Conduct report #815297-381;

7. That the defendant's Lt. Huatamaki and Mc Caughtry arbitrary placed the plaintiff in Adjustment and Program Segregation, wherein there was insufficient evidence to support a finding of guilt and where the defendant's relied soley on the conduct report and investigation officer's report alone;

THerefore, setforth in ARticle 1 § 4 of the Wisconsin Constitution by right of the people, peaceably to assemble to consult for any Department thereof, shall never be abridged. Wherefore the plaintiff being a natural person-born equally free and independent and being part, thereof, the people of Wisconsin being grateful to Almighty God for our freedom, do ordain our right to this Court for Redress in our demand for judgment:

1. **INJUNCTIVE RELIEF;** in that all Conduct Report and records of the INstitution, pertaining to Conduct Report #815297-381, be expunged from all the plaintiff's records and files;

2. **DECLARATORY JUDGMENT:** Against the defendants both jointly and severally for the sum of One Hundred (~~\$100.00~~) Dollars per. day for each day plaintiff was confined in Adjustment SEgregation on COnduct report#815297-381;

3. **PUNITIVE DAMAGES:** Against the defendants both jointly and severally for sum of Five Hundred (\$500.00) dollars per. day for each day the plaintiff spent confined in Program SEgregation, On Conduct Report #815297-381;

4. **COMPENSATORY DAMAGES:** From each defendant both jointly and severally for the sum of One Hundred THousand (\$100.000.00) dollars.

Dated 18<sup>th</sup> Day of SEPTEMBER, 1997

RESPECTFULLY SUBMITTED

James W. Moore  
181 JAMES W. MOORE #82877  
IN PERSON/BOX 351  
WAUPUN, WIS. 53963-0351

This instrument was sworn before me  
On 18<sup>th</sup> day of September, 1997  
My Commission Expires: 8-23-98,

Notary Public/State of Wisconsin

PETITION FOR WAIVER OF FEES/COSTS-AFFIDAVIT OF INDIGENCY AND ORDER

FILED IN CASE NO. 13-177

Section 2.

Complete this section only if you do not qualify under Section 1, or if the instructions for that section require you to complete it.

1. I  am  am not married.

2. I  am  am not employed. Name of employer: \_\_\_\_\_

3. I earn \$ 0- gross  weekly.  every 2 weeks.  twice monthly.  monthly.  
My take-home pay is \$ 0- per pay period.

4. I receive monthly income totaling the amount of \$ 0- from:  
 Pension  Social security  Unemployment compensation  
 Disability  Student loans/grants  Other: 0-

5. I have the following cash assets:  
 Savings accounts: \$ 0-  Cash: \$ 0-  
 Checking accounts: \$ \_\_\_\_\_  Money owed me: \$ \_\_\_\_\_

6. I have the following other assets:  
 Vehicle-Yr./Make: 0- \$ 0-  Household furnishings: \$ 0-  
 Vehicle-Yr./Make: \_\_\_\_\_ \$ \_\_\_\_\_  Equity in real estate: \$ \_\_\_\_\_  
 Other individual assets valued over \$200 each: 0- \$ \_\_\_\_\_

7. My household consists of myself and 0- others:  
 Full name: 0- Relationship to me: 0- Under age 18  Yes  No  
 Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
 Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
 Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No  
 Full name: \_\_\_\_\_ Relationship to me: \_\_\_\_\_ Under age 18  Yes  No

8. The other members of my household have monthly income totaling the amount of \$ 0- from:  
 Wages  AFDC  General relief  Food stamps  
 Pension  Social security  Unemployment compensation  Supplemental security income  
 Disability  Student loans/grants  Relief to needy Indian persons  
 Other: **NONE**

9. I have the following debts:

	Amount:	Monthly Payment:
a. Mortgage	<u>0-</u>	<u>0-</u>
b. Auto loan	_____	_____
c. Credit cards	_____	_____
d. Other: _____	_____	_____
_____	_____	_____

10. I have the following unusual expenses, other than ordinary living expenses:  
 \_\_\_\_\_  
 \_\_\_\_\_  
**NONE**  
 \_\_\_\_\_  
 \_\_\_\_\_



## MEMORANDUM

To: Members, JCRAR  
From: Senator Richard Grobschmidt, Co-Chairman  
Representative Glenn Grothman, Co-Chairman  
Date: January 30, 1998  
Re: Service of Lawsuit

Pursuant to s. 227.40(5), Stats, the Joint Committee for Review of Administrative Rules has been served with notice in the matter of *Charles Downing #99690 v. Michael Sullivan, Secretary, Department of Corrections*. A copy of the lawsuit is attached for your review.

Subchapter III of Chapter 227, Stats, establishes an action for declaratory judgment in the circuit court for Dane County to be the primary means for judicial review in a dispute concerning the validity of an administrative rule. Subject to the approval of the Joint Committee on Legislative Organization, the Joint Committee for Review of Administrative Rules may choose to be made a party to the suit, and thereby be entitled to be heard.

If you are interested in a further pursuit of the rights of the JCRAR under this suit, please forward your request in writing to the offices of the co-chairmen of the committee.

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

State ex rel. Wisconsin  
Charles Downing #99690  
v.  
Michael Sullivan

98CV0066

CASE NO. \_\_\_\_\_  
97 TP 411

JAN 10 11 31 AM '98  
CLERK OF CIRCUIT COURT

**ORDER WAIVING COSTS AND FEES (Prisoner/Pro-Se)**

Upon reading and filing the foregoing affidavit of Charles Downing  
pro se, in the above entitled action, and on motion of the petitioner;

IT IS ORDERED that the petitioner Charles Downing pro se,  
be and hereby is permitted to commence or defend the above entitled action without first  
posting security for costs, or without first making payment for service and filing fee; and

IT IS FURTHER ORDERED that the Clerk of said Circuit Court accept for filing and  
so file all pertinent and relative papers without costs therein; and

IT IS FURTHER ORDERED that the Sheriff serve all papers herein without first  
requesting payment of a service fee; and

IT IS FURTHER ORDERED that should costs be recovered in this action, then costs  
shall first be applied to any and all costs herein waived.

Dated this 8 day of January, 19 98.

State of Wisconsin  
County of Dane  
This document is a full, true and  
Correct copy of the original on file  
and of record in my office and has  
been compared by me.

Attest Jan 16 1998  
JUDITH A. COLEMAN  
Clerk of Courts

By Soren C. Korpentering  
Deputy Clerk

BY THE COURT:

Paul D. Haggerty  
Circuit Judge

STATE  
OF  
WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

COUNTY  
OF  
DANE

CHARLES DOWNING,  
Petitioner,

98CV0066  
97IP0411

v.

Case No. \_\_\_\_\_  
Code No. 30607 / 30701

MICHAEL SULLIVAN, Secretary,  
Department of Corrections,  
Respondent.

**SUMMONS**

THE STATE OF WISCONSIN, To each person named above as a Defendant;

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within (20) (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent to the court whose address is 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709, and to Plaintiff whose address is P.O. Box 351, Waupun, Wisconsin 53963. You may have an attorney help or represent you.

If you do not provide a proper answer within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

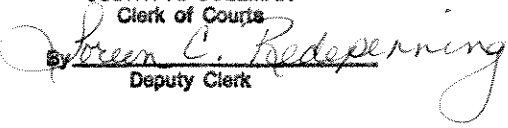
Dated: December 1<sup>st</sup>, 1997.

Signed:

  
CHARLES DOWNING  
Petitioner/Plaintiff, Pro Se

State of Wisconsin  
County of Dane  
This document is a full, true and  
Correct copy of the original on file  
and of record in my office and has  
been compared by me.

Attest Jan 16, 1998  
JUDITH A. COLEMAN  
Clerk of Courts

  
By Karen C. Redeperring  
Deputy Clerk

Charles Downing #99690  
Waupun Corr. Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

STATE  
OF  
WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

COUNTY  
OF  
DANE

CHARLES DOWNING,  
Petitioner,

98CV00666  
97IP0411

v.

Case No. \_\_\_\_\_  
Code No. 30607 / 30701

MICHAEL SULLIVAN, Secretary,  
Department of Corrections,  
Respondent.

PETITION FOR REVIEW OF DECLARATORY RULING  
AND / OR  
PETITION FOR DECLARATORY JUDGMENT

TO: Judge of Circuit Court:

The above petitioner, Charles Downing, appears pro se, and moves this Court to review a Declaratory Ruling of the Department of Corrections made pursuant to Chapter 227, Wis. Stats., and hereby presents the following:

1. The petitioner, Charles Downing, is currently incarcerated at the Waupun Correctional Institution, P.O. Box 351, Waupun, Wisconsin 53963-0351, with an inmate identification number of 99690.

2. The Waupun Correctional Institution is under the direct control of the Wisconsin Department of Corrections, P.O. Box 7925, 149 East Wilson Street, Madison, Wisconsin 53707-7925.

3. The respondent, Michael Sullivan, is the Secretary of the Department of Corrections.

4. On August 6, 1997, petitioner submitted a Petition for Declaratory Ruling upon the respondent pursuant to sec. 227.41 for an order/ruling to exempt the petitioner from the enforcement of sec. DOC 309.466, Wis. Adm. Code (See Exhibit A).

5. On August 11, 1997, the respondent denied the above petition because DOC 309.466 has no provision for waiver by the respondent **(See Exhibit B)**.

6. On August 14, 1997, the petitioner authored a letter to the respondent explaining that the authority for waiver is located in sec. 227.41(1), Stats., and petitioner requested reconsideration of respondent's decision **(See Exhibit C)**.

7. On August 18, 1997, the respondent recognized the authority of sec. 227.41(1), but maintained it's August 11 decision/determination **(See Exhibit D)**.

8. Pursuant to sec. 801.02, Stats., petitioner filed Inmate Complaint No. WCI-3045-97 requesting exemption regarding sec. DOC 309.466, in which the Complaint was dismissed and final on October 31, 1997 **(See Exhibits E and F)**.

9. Section DOC 309.466, Wis. Adm. Code, allows the respondent to deduct 15% of all earned or received income (up to \$500.00) and place the deduction into a segregated account (Release Account) in which can only be used or spent for purposes of that inmate's release.

10. Petitioner currently has \$502.66 in his Release Account.

11. Petitioner is currently serving three (3) consecutive prison sentences, and all tolled, petitioner's parole eligibility date is July 21, 2181, which will allow petitioner access to his Release Account when he is 219 years old.

12. Petitioner will never be released within the meaning of sec. DOC 309.466, and as such, the respondent will permanently deprive petitioner of private property interest by governmental action without due process, and, there is no genuine governmental interest at stake because the purpose and intent of sec. DOC 309.466, in this case, would never be served.

WHEREAS, petitioner prays that this Court allow petitioner

to proceed in this action without pre-payment of costs and fees based upon the submitted Affidavit of Indigency.


WHEREAS, petitioner asks that this Court order the respondent to return petitioner's property and exempt petitioner from the enforcement of sec. DOC 309.466, Wis. Adm. Code.

WHEREAS, petitioner asks that this Court order the respondent to reimburse petitioner all costs and fees incurred by petitioner in order to prosecute this action.

AND, any other relief that this Court deems fair, proper, and just.

Dated this 1<sup>st</sup> day of December, 1997.

Respectfully Submitted:

  
CHARLES DOWNING  
Petitioner, Pro Se

Charles Downing #99690  
Waupun Corr. Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

CHARLES DOWNING  
Waupun Correctional Institution  
P.O. Box 351  
Waupun, Wisconsin 53963-0351  
Petitioner,  
v.

DEPARTMENT OF CORRECTIONS  
Michael Sullivan, Secretary  
P.O. Box 7925  
Madison, Wisconsin 53707-7925  
Respondent.

---

PETITION FOR DECLARATORY RULING

---

Pursuant to Sections 227.41 through 227.50, Wis. Stats., the petitioner, Charles Downing, hereby moves the respondent, the Department of Corrections for the State of Wisconsin for a declaratory ruling exempting petitioner from the enforcement of sec. DOC 309.466, Wisconsin Administrative Code, Release Account Funds. Petitioner requests that the monies in his Release Account be transferred into his Regular Account based upon the following:

1. Charles Downing is currently incarcerated at the Waupun Correctional Institution and has an inmate identification number of 99690.

2. The Department of Corrections is headed by Secretary Michael Sullivan and the Waupun Correctional Institution is under direct control of the Department of Corrections.

3. Sec. DOC 309.466's purpose is to set aside 15% of the petitioner's earned or received monies/income for the express purpose of the petitioner having funds of up to \$500.00 available upon release in order to help or assist the petitioner with his transition back into society. The petitioner currently has \$500.00 in his Release Savings Account.

4. The petitioner is serving three (3) consecutive sentences: 1) A 70-year sentence; 2) A 59-year sentence; and, 3) A sentence of life without parole with a court-set parole eligibility date of 100 years, plus three consecutive 5-year terms. In sum, the petitioner's parole eligibility date is July 21, 2181, which would make the petitioner eligible for parole when he is 219 years old.

5. The petitioner's parole eligible date cannot be altered by the respondent.

6. The petitioner will never be released within the meaning of sec. DOC 309.466, and as such, the respondent will

permanently deprive the petitioner, erroneously, of private property interest by governmental action without due process, and, there is no genuine important governmental interest at stake because the purpose and intent of sec. DOC 309.466, in this case, could never be served.

**Requested Relief/Ruling**


- a). That all monies set aside pursuant to sec. DOC 309.466 be returned to the petitioner into his Regular Account;
- b). That petitioner be exempt from the 15% deduction/enforcement of DOC 309.466;
- c). That DOC 309.466 be altered or modified to allow any inmate to be excluded from its enforcement and such exclusions be made on a case-by-case basis and such exclusions be made by the Secretary of the Department of Corrections; and
- d). That the petitioner requests a hearing pursuant to sec. 227.42, Wis. Stats.

Dated this 6<sup>th</sup> day of August, 1997.

  
CHARLES DOWNING  
Petitioner

Charles Downing #99690  
Waupun Corr. Inst.  
P.O. Box 351  
Waupun, WI 53963-0351

Subscribed and sworn to before me  
this 6 day of August, 1997

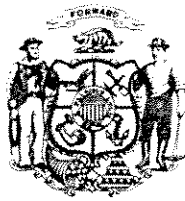
  
Notary Public

My commission expires: 6-30-2000



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



Recd.  
8-12-97  
REC-17

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

## State of Wisconsin Department of Corrections

---

August 11, 1997

Charles Downing #99690  
Waupun Correctional Institution  
P.O. Box 351  
Waupun, WI 53963-0351

Re: Release Account

Dear Mr. Downing:

Your petition to Secretary Sullivan, dated August 6, 1997, has been referred to me for response.

DOC 309.466 of the Wisconsin Administrative Code requires the creation of a release account for each inmate and restricts the use of monies in the account to the inmate's release. There is no provision for waiver by the Department.

Your petition, therefore, must be denied.

Sincerely,

Thomas G. Van de Grift  
Assistant Legal Counsel

August 14, 1997

Thomas Van de Grift  
Assistant Legal Counsel  
Department of Corrections  
P.O. Box 7925  
Madison, WI 53707-7925

Re: Release Account

Dear Mr. Van de Grift:

I am in receipt of your letter dated August 11, 1997, denying my Petition for Declaratory Ruling (dated August 6, 1997) for the sole reason that sec. DOC 309.466, Wis. Adm. Code, has no waiver provision in its application to any inmate.

First, let me point out that your review of my petition was too restrictive to looking for a provisional waiver in just sec. DOC 309.466. The DOC's waiver of DOC 309.466 is found in sec. 227.41(1), Wis. Stats., "Any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for a hearing shall be afforded to interested parties..."

In light of the language of sec. 227.41(1), the DOC does have authority to exempt me from the enforcement of sec. DOC 309.466. Therefore, I request reconsideration of my petition and that your reconsideration decision be put in writing.

Also, my petition requests a hearing pursuant to sec. 227.42, Stats., which gives me the right to a hearing, a statement of reasons denying me that right, or, let a 20 day default eat it up.

It may be wise for you/your department to put forth a detailed reason or reasons when dealing with my petition and this reconsideration request because under judicial review it is both of our responsibilities to have a fully informed court.

I thank you for your time and I will await a response.

Sincerely,

---

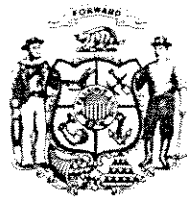
CHARLES DOWNING

Charles Downing #99690  
Waupun Corr. Instn.  
P.O. Box 351  
Waupun, WI 53963-0351

Exhibit C

Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



8-19-97  
COC:11

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

## State of Wisconsin Department of Corrections

---

August 18, 1997

Charles Downing #99690  
Waupun Correctional Institution  
P.O. Box 351  
Waupun, WI 53963-0351

Re: Release Account

Dear Mr. Downing:

Sec. 227.41(1) permits, but does not require the Department to issue a declaratory ruling. The Department's final determination on the question of law is that it does not have authority under its rule to waive the requirement for a release account.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Thomas G. Van de Grift'.

Thomas G. Van de Grift  
Assistant Legal Counsel

Exhibit D

4-2-97  
CEL-11

WARDEN'S DECISION ON COMPLAINT

Inmate Name	Date Complaint Received	Complaint File Number(s)
DOWNING, CHARLES P-6 DOC Number 099690	08/15/97	WCI 3045-97

ICE Recommendation Dismiss complaint.

Warden's Decision  This complaint is dismissed.  
 This complaint is dismissed with modifications shown below.  
 This complaint is affirmed.  
 This complaint is affirmed with modifications shown below.

Reasons for Decision (If ICE's recommendation is not accepted)

Names of additional people who should receive a copy of this decision (Other than the Complainant or the ICE)

Warden/Designee Signature

Date Signed



9-7-97

NOTICE TO INMATE:

If you are adversely affected by the decision, you have 5 calendar days to appeal the decision to the Corrections Complaint Examiner. Form (DOC-405) for such an appeal may be obtained from the Institution Complaint Examiner.

(Fold so address is visible through window of envelope)

DOWNING, CHARLES P-6  
DOC # 099690, HU:SWCH  
Waupun Correctional Institution  
PO Box 351, 200 S. Madison St.  
Waupun, WI 53963-0351

Exhibit E

INSTITUTION COMPLAINT EXAMINER'S REPORT

---

Inmate Name	Institution	Complaint File Number
DOWNING, CHARLES P-6	WCI	WCI 3045-97

---

Inmate Number	Date Complaint Received
099690	08/15/97

---

Complaint Category: 17 - INMATE ACCOUNTS

Complaint Summary :

CMP-I/M Downing complains he should be exempt from DOC 309.466 and his release account placed in his regular account.

Persons interviewed and documents relied upon : Inmate contacted? No

Summary of Facts:

The complainant should have contacted his social worker with this request instead of filing a complaint. DOC 309.466(2) states, "Release account funds may not be disbursed for any reason until the inmate is released to field supervision, EXCEPT to purchase adequate clothing for release and for out-of-state release transportation." The last court decision was that DOC 309.466 is constitutional, whether applied to lifers, to the general prison population, or both. Even though the complainant may be a lifer, the release account applies to him.

Resolution/Recommendation: Dismissed

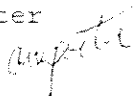
---

Institution Complaint Examiner's Signature

Date Signed

C.M. Porter

09/02/97



2-2  
11/11/97

11-06-97  
DOC

SECRETARY'S DECISION ON INMATE COMPLAINT

---

<b>Inmate Name</b>	<b>Complaint File Number(s)</b>
CHARLES DOWNING	WCI 3045-97

---

The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of 10/29/97 in the above case:

The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.

*Ave M. Bie*

Secretary / Designee

10/31/97

Copies mailed to:

Charles Downing, DOC # 099690  
Corrections Complaint Examiner  
Warden - WCI

Date Signed

---

**NOTICE TO INMATE:**

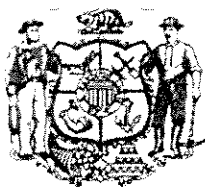
If an affirmed complaint has not been implemented within 30 calendar days of the decision to affirm, you may inform the Secretary of the Department of Corrections directly by sealed mail to:

Office of the Secretary  
Department of Corrections  
P.O. Box 7925  
Madison, WI 53707-7925

---

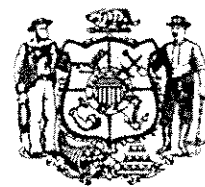
Charles Downing, DOC # 099690  
Waupun Correctional Institution  
PO Box 351, 200 S. Madison St.  
Waupun, WI 53963-0351

Exhibit F



# State of Wisconsin

Department of Corrections



## Report of Corrections Complaint Examiner

Name: DOWNING, CHARLES

Complaint Number: WCI 3045 97

Nature of Complaint: Complains he should be exempt from DOC 309.466 and his release account placed in his regular account.

Method of Disposition:

Y Review on Record  
N Investigation

Recommendation:

I am unaware of any precedential court ruling that indicates DOC 309.466 does not apply to lifers, regardless of their parole status. Accordingly, and in agreement with the WCI ICE, it is recommended this complaint be dismissed.

Date of Submission to Secretary:

10/29/97

Examiner:

*William [Signature]*

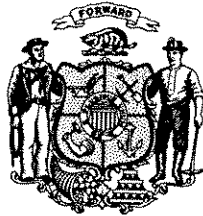
Exhibit F-2

State of Wisconsin

JUL 23 1998

JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION

*Cochairperson*  
**PRESIDENT BRIAN D. RUDE**  
State Senate  
P.O. Box 7882  
Madison, WI 53707-7882  
Phone: 266-5490



*Cochairperson*  
**SPEAKER SCOTT R. JENSEN**  
State Assembly  
P.O. Box 8952  
Madison, WI 53708-8952  
Phone: 266-3387

July 22, 1998

The Honorable James E. Doyle  
Attorney General of Wisconsin  
Room 114 East, State Capitol  
Madison, WI 53702

Dear Attorney General Doyle:

State Senator Richard Grobschmidt and State Representative Glenn Grothman in their capacities, in 1996, as Cochairpersons, Joint Committee for Review of Administrative Rules, have been named as defendants in a suit brought by Mark D. Larson, a prisoner at the Columbia Correctional Institution, in the U.S. District Court for the Western District of Wisconsin. The case number of the action is 98C0497C.

Pursuant to s. 165.25 (6), Stats., we are requesting that you and the Department of Justice provide legal services and defend Senator Grobschmidt and Representative Grothman in this action.

Thank you for your services in this matter.

Sincerely,

Handwritten signature of Brian D. Rude in cursive.

\_\_\_\_\_  
President Brian D. Rude  
Cochairperson

Handwritten signature of Scott R. Jensen in cursive.

\_\_\_\_\_  
Speaker Scott R. Jensen  
Cochairperson

BDR:SRJ:kja

cc: Senator Richard Grobschmidt  
Representative Glenn Grothman  
A.A.G. Matthew Frank





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

JUL 27 1998

JAMES E. DOYLE  
ATTORNEY GENERAL

Burneatta L. Bridge  
Deputy Attorney General

123 West Washington Avenue  
P.O. Box 7857  
Madison, WI 53707-7857  
Fax 608-267-2223

Wednesday, July 22, 1998

**NOTICE OF COMMENCEMENT OF ACTION**

**Plaintiff(s):** Larsen, Mark D. **Inmate #:** 149464  
**Defendant(s):** Sullivan, Michael J.; Kingston, Phil; Borgan, Thomas G.; Landaal, Calvin; Lemmenes, Dick; Grobschmidt, Richard; Grothman, Glenn  
**Court Name:** United States District - Western  
**Case Number:** 98C0497C  
**Date of Receipt at the Institution:** 07/17/98  
**Assistant Attorney General Assigned:** Robert Hunter  
**Attorney's Phone Number:** 608-266-3941  
**Paralegal Assigned:** Sally Mueller  
**Paralegal's Phone Number:** 608-267-2238

TO INSTITUTION: Please contact the attorney or paralegal assigned if you cannot complete your response within ten days of service.

TO INSTITUTION AND CENTRAL RECORDS CUSTODIAN: If an attorney representing the inmate(s)-plaintiff(s) seeks documents from the inmate file, make duplicates of all documents the attorney removes and forward the duplicates to the attorney assigned.

TO ALL NAMED DEFENDANTS: The attorney assigned will appear on your behalf to defend you in this lawsuit. We will assume this meets your approval unless you advise the attorney assigned to the contrary within seven days from the date of this notice. Copies of correspondence and pleadings WILL NOT be forwarded to you unless you advise the attorney to the contrary within seven days of this notice.

- cc: David Whitcomb  
Robert Hunter  
Sally Mueller  
Central Records Custodian: Bobbie Otis
- \* Institution Records Custodian: Tom Borgen  
All Defendants(s): Listed above  
Pamela Wolfe  
John Ray  
File # 980722001

\* Has the inmate-plaintiff filed an inmate complaint pertaining to the subject matter of this lawsuit?

No \_\_\_\_\_ Yes \_\_\_\_\_ ICI# \_\_\_\_\_

Please return this completed form to Chris Sydow, Legal Secretary, at the address listed above within ten days.

8  
DOCKET  
NUMBER

U.S. DISTRICT COURT  
WEST. DIST. OF WISCONSIN

SEP - 3 1998

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

JUDGE: \_\_\_\_\_ CLERK: \_\_\_\_\_  
CASE  
NUMBER

Mark D. Larsen,

Plaintiff(s),

JUDGMENT IN A CIVIL CASE

vs.

Case No.: 98-C-0497-C

Michael J. Sullivan,  
Phil Kingston,  
Thomas G. Borgen,  
Calvin Landdaal,  
Dick Lemmenes,  
Richard Grobshmidt,  
Glenn Grothman,

Defendant(s).

---

This action came for consideration before the court with District Judge Barbara B. Crabb presiding. The issues have been considered and a decision has been rendered.

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IT IS ORDERED AND ADJUDGED

that:

1. The equal protection claims of plaintiff Mark D. Larsen against defendants Michael J. Sullivan, Phil Kingston, Thomas G. Borgen, Calvin Landaal, Dick Lemmenes, Richard Grobshmidt and Glenn Grothman are dismissed with prejudice pursuant to 28 U.S.C. 1915A(b) for plaintiff's failure to state a claim upon which relief may be granted.

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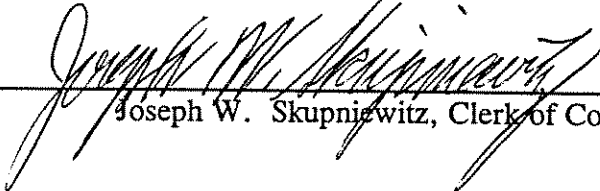
AA G Hunter  
this 3<sup>rd</sup> day of Sept, 1998

By D. Hahn

Deputy Clerk

2. The court declines to exercise supplemental jurisdiction over plaintiff's remaining Wisconsin state law claims; these claims are dismissed without prejudice.

3. Judgment is entered in favor of defendants Michael J. Sullivan, Phil Kingston, Thomas G. Borgen, Calvin Landaal, Dick Lemmenes, Richard Grobshmidt and Glenn Grothman dismissing plaintiff Mark D. Larsen's equal protection claim, and this case is closed.

  
\_\_\_\_\_  
Joseph W. Skupniewitz, Clerk of Court

SEP -3 1998  
\_\_\_\_\_  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK D. LARSEN,

Plaintiff,

v.

MICHAEL J. SULLIVAN,  
PHIL KINGSTON  
THOMAS G. BORGEN,<sup>†</sup>  
CALVIN LANDAAL,  
DICK LEMMENES,  
RICHARD GROBSHMIDT,  
and GLENN GROTHMAN,

Defendants.

ORDER

98-C-0497-C

Plaintiff Mark D. Larsen is a former inmate of the John C. Burke Correctional Center in Waupun, Wisconsin. While plaintiff was at the center, he was denied compassion leave to attend his grandmother's funeral services. Plaintiff alleges that defendants, various Department of Correction officials, violated the equal protection clause of the Fourteenth Amendment by denying him such leave because he is black and in light of the fact that other

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<sup>†</sup> In an earlier order, the name "Borgen" was misspelled "Brogan."

inmates were granted leave at a similar time. Also, plaintiff asserts that denying him leave violated various state of Wisconsin laws and administrative regulations. He asserts that jurisdiction exists over his equal protection claims pursuant to the general federal question statute, 28 U.S.C. § 1331, and over his state law claims under the supplemental jurisdiction statute, 28 U.S.C. § 1367.

Although plaintiff has been released from confinement, at the time he filed his action and paid the full filing fee, he was an inmate at the Columbia Correctional Institution in Portage, Wisconsin. Because this is a suit by a prisoner against governmental officials, the court is required to screen the complaint, identify the claims and dismiss any claim that is frivolous, malicious or is not a claim upon which relief may be granted. See 28 U.S.C. §§ 1915A(a), (b). Because plaintiff's equal protection claims are not claims upon which relief may be granted, and I decline to exercise jurisdiction over his state law claims, this action will be dismissed pursuant to 28 U.S.C. § 1915A. Plaintiff will be free to pursue his state law claims in a Wisconsin court.

Plaintiff has filed two documents setting forth allegations of fact: the complaint, dkt. # 1, and a document entitled "Declaration in Support of Plaintiff's Documentary Proof of Exhausting Administrative Remedies," dkt. # 6. (The second document was filed in response to this court's request that plaintiff submit proof that he exhausted administrative remedies. See 42 U.S.C. § 1997e(a).) In these two documents, plaintiff makes the following

allegations of fact.

### ALLEGATIONS OF FACT

Plaintiff Mark D. Larsen is a former inmate of the John C. Burke Correctional Center in Waupun, Wisconsin. Defendant Michael J. Sullivan is Secretary of the Wisconsin Department of Corrections. Defendant Phil Kingston is an Assistant Administrator of the department with supervisory responsibility of the correctional center system, which includes the Burke Center. Defendant Thomas G. Borgen is the superintendent of the Burke Center. Defendant Calvin Landaal is assistant superintendent of the Burke Center. Defendant Dick Lemmenes is a social worker at the Burke Center. Defendants Richard Grobshmidt and Glenn Grothman are co-chairpersons of the Joint Committee for Review of Administrative Rules.

On October 13, 1997, while plaintiff was an inmate at the Burke Center, his grandmother died. That day, he asked defendant Lemmenes if he could be granted leave to attend his grandmother's funeral services. Defendant Lemmenes denied the request, referring plaintiff to the center's supervisor. On October 14, plaintiff filed a written request with defendant Borgen seeking to attend the funeral services. Defendant Landaal called plaintiff to his office and informed plaintiff that his leave request would be investigated and that he would be in contact with plaintiff; Landaal never contacted plaintiff. On October

14, plaintiff received a written denial for leave from defendant Borgen. Plaintiff's grandmother was buried on October 17.

Although plaintiff did not attend the burial service, the memorial service had not been held and was scheduled for October 30. On October 21, plaintiff filed an appeal with defendants Sullivan and Kingston requesting review of defendant Borgen's decision to deny him leave. The appeal was denied in a letter dated October 24. The memorial service for plaintiff's grandmother was held on October 30; plaintiff did not attend.

Defendant Borgen informed plaintiff that there were two reasons for denying his leave request. One, because the offense for which plaintiff was confined was assaultive, plaintiff was ineligible for unescorted leave under Wis. Adm. Code ch. DOC 326. See § DOC 326.04(3). Two, because grandparents are not defined as "close family relatives," plaintiff was ineligible for supervised temporary leave under ch. DOC 325. See § DOC 325.03(1).

Further plaintiff alleges:

- On October 23, 1997, an inmate Ronald Wagner, who is white, was granted leave to attend a funeral service for his grandmother (plaintiff is black);
- On March 28, 1998, a different prisoner was granted leave to attend "a religious ceremonial funeral service"; and
- "[O]ther prisoners . . . have been denied participation in religious ceremonial services for their grandparents, while confined in a minimum security facility."

## DISCUSSION

### A. Background

Wisconsin administrative regulations set forth two types of leave that enable prisoners to attend funerals of relatives. One, under Wis. Adm. Code ch. 326, a prisoner may have unescorted leave to attend the funeral of a “close family member.” See Wis. Adm Code § 326.04(2)(b). A close family member means the prisoner's parent, child, spouse, grandparent, brother or sister. See id. § DOC 326.03(3). There are eligibility limitations for unescorted leave; among them, the prisoner shall not have a criminal conviction for or history of assaultive behavior. See id. § DOC 326.04(3). Two, under Wis. Adm Code ch. 325, a prisoner may be eligible for a temporary supervised release to attend the funeral of a “close family member.” See § DOC 325.01(b). In ch. DOC 325, close family member means the prisoner's parents, spouse, children, and siblings. See id. § DOC 325.03(1). Plaintiff's claims involves a leave request to attend the funeral of a grandparent. Thus, the only leave plaintiff was eligible for was unescorted leave under ch. 326.

### B. Plaintiff's Claims

I understand plaintiff to be asserting that defendants violated the equal protection clause of Fourteenth Amendment by 1) denying him leave to attend services for his grandmother because he is black and 2) denying *only* him and not other inmates such leave.



Plaintiff fails to state claims upon which relief may be granted.

Dismissal of a complaint for a failure to state a claim upon which relief may be granted is appropriate only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. See Gossmeier v. McDonald, 126 F.3d 481, 489 (7th Cir. 1997). At this stage, plaintiff's allegations must be examined to determine whether he states a prima facie case of discrimination under the equal protection clause. If he does not, his claim must be dismissed. See 28 U.S.C. §§ 1915A(a), (b).

With respect to his claim of discrimination on the basis of his race, plaintiff's allegations must satisfy three elements: 1) he is a member of a protected class; 2) he is otherwise similarly situated to members of the unprotected class; and 3) he was treated differently from members of the unprotected class. See McNabola v. Chicago Transit Authority, 10 F.3d 501, 513 (7th Cir.1993). Plaintiff's allegations satisfy the first and third elements but not the second element. Although he makes several broad allegations concerning the granting of leave to inmates within the Wisconsin prison system, they are insufficient because he does not allege that they were seeking leave to attend the funeral of a grandparent. Plaintiff makes a stronger allegation that inmate Ronald Wagner, who is white, was granted leave to attend a grandparent's funeral but it still fails to carry the day. Plaintiff was denied leave because of an assaultive history. On the basis of plaintiff's allegations, that fact distinguishes him from inmate Wagner. Critically, plaintiff does not

allege that inmate Wagner had an assaultive history and despite such history was granted leave. In sum, plaintiff fails to state a claim of racial discrimination because he fails to allege that he was treated differently from members of the unprotected class.

The complaint can be read to allege an alternative and generic equal protection claim that defendants denied *only* him leave to attend the funerals of grandparents.

Prisoners do not surrender their rights to equal protection at the prison gate. Unequal treatment among inmates, however, is justified if it bears a rational relation to legitimate penal interests.

Williams v. Lane, 851 F.2d 867, 881 (7th Cir.1988). Plaintiff's claims rests on broad allegations that inmate Wagner was granted leave to attend a funeral of a grandparent; another inmate was granted leave to attend "a religious ceremonial funeral service"; and "other prisoners" at minimum security facilities have been granted leave to attend services for their grandparents. Nonetheless, plaintiff's allegations disclose a rational reason why he among these other inmates was denied leave: plaintiff has a violent history that renders him ineligible for leave pursuant to Wis. Adm. § Code 326.04(3). Plaintiff fails to state a claim upon which relief may be granted.

### C. Other Issues

Before concluding, I must address several procedural twists and turns that are presented in this action:

1. At a glance, the complaint appears to contain a variety of state law claims. Having determined that plaintiff states no claim for relief under federal law, I decline to exercise supplemental jurisdiction over his state law claims. Consequently, I see no need to examine whether these claims have merit under 28 U.S.C. § 1915A. They will be dismissed without prejudice. Plaintiff is free to re-file these claims in an appropriate Wisconsin state court.

2. The complaint was filed on July 15, 1998, at which time plaintiff paid the full filing fee. At that time, plaintiff was confined at the Columbia Correctional Center in Portage, Wisconsin and therefore although plaintiff paid the full filing fee, I construed the 1996 Prison Litigation Reform Act to require that the complaint be screened because plaintiff is a “prisoner” and defendants are governmental officials. See 28 U.S.C. § 1915A(a). As applicable in this case, “prisoner” means a person “incarcerated or detained” who is “convicted of . . . violations of criminal law.” See § 1915A(c). Since plaintiff was confined at Columbia Correctional Institution when the complaint was filed, his complaint was set aside for § 1915A screening. I do not consider plaintiff’s release from custody subsequent to the filing of the complaint to render his action immune from screening. I interpret the critical factor to be the plaintiff’s status at the time the complaint was filed, not his status when the screening process begins. Cf. Lucien v. Jockish, 133 F.3d 464, 467 (7th Cir. 1998) (“The applicability of the PLRA to a prisoner’s complaint normally depends on when the complaint is filed.”).

3. Defendants have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(5). They contend that plaintiff attempted to accomplish service of the complaint by mail in violation of Rule 4(b). Because I have determined that the federal law claims in this action has no merit and that jurisdiction will not be exercised over any remaining state law claims, the motion is moot.

4. The PLRA requires that “strikes” be recorded against inmates for every “action” that is filed which is “frivolous, malicious, or fails to state a claim upon which relief may be granted.” See 28 U.S.C. § 1915(g). If a prisoner gets three such strikes, he or she is barred from seeking leave to proceed in forma pauperis in further actions “unless the prisoner is under imminent danger or serious physical injury.” See id. I have found that plaintiff fails to state a federal law claim upon which relief may be granted. However, because plaintiff presents additional state law claims in this action, a strike will not be recorded against plaintiff because it cannot be said that his “action” is without merit.

#### ORDER

IT IS ORDERED THAT:

I. The equal protection claims of plaintiff Mark D. Larsen against defendants Michael J. Sullivan, Phil Kingston, Thomas G. Borgen, Calvin Landaal, Dick Lemmenes, Richard Grobshmidt and Glenn Grothman are DISMISSED with prejudice pursuant to 28 U.S.C.

§ 1915A(b) for plaintiff's failure to state a claim upon which relief may be granted;

2. The court declines to exercise supplemental jurisdiction over plaintiff's remaining Wisconsin state law claims; these claims are DISMISSED without prejudice;

3. The clerk of court is directed to enter final judgment in favor of defendants Michael J. Sullivan, Phil Kingston, Thomas G. Borgen, Calvin Landaal, Dick Lemmenes, Richard Grobshmidt and Glenn Grothman dismissing plaintiff's Mark D. Larsen's equal protection claim;

4. The motion of defendants to dismiss this action for insufficiency of process pursuant to Fed. R. Civ. P. 12(b)(5) is DENIED as moot;

5. A strike pursuant to 28 U.S.C. § 1915(g) will not be recorded against plaintiff; and

6. The clerk of court is directed to close the file.

Entered this 2d day of September, 1998.

BY THE COURT:

Barbara B. Crabb  
BARBARA B. CRABB  
District Judge



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

SEP 10 1998

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September 4, 1998

David Whitcomb  
Legal Counsel  
Department of Corrections  
149 East Wilson Street  
Madison, WI 53708

RE: Larsen v. Sullivan, et al.  
Case No. 98-C-0497-C (WDWI)

Dear Mr. Whitcomb:

Enclosed please find an order from the Honorable Barbara B. Crabb, U.S. District Court Judge, Western District of Wisconsin, dismissing the above captioned action. The above captioned action was brought by a former inmate alleging, among other things, that the defendants discriminated against him on the basis of race when they failed to authorize temporary release to attend his grandmother's funeral.

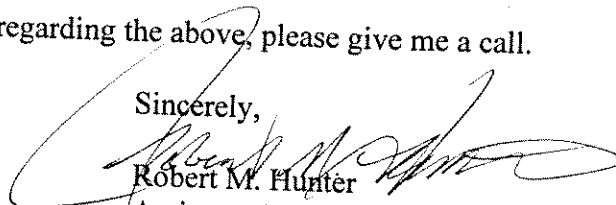
In response to the receipt of the complaint, this office filed a motion to dismiss specifically asserting that the plaintiff had failed to effectuate service of the summons and complaint, as required by the FRCP. Rather than rendering a decision on the defendants' motion to dismiss for lack of service, however, Judge Crabb *sua sponte* ruled that the complaint failed to state a claim for which relief could be granted against the defendants under federal law and dismissed the complaint. Specifically, Judge Crabb found that the plaintiff's assertion (that he was denied equal protection of the laws) was without merit because he failed to allege facts sufficient to show that he was treated differently from members of the unprotected class. In other words, Judge Crabb held that the plaintiff had failed to allege that white inmates with assaultive histories were allowed temporary leave to attend their grandparents' funerals, while he was not.

Despite this ruling, Judge Crabb specifically refused to find that the dismissal of the plaintiff's complaint was a strike for the purposes of 28 U.S.C. § 1915(g). As the reason for her decision in this regard, Judge Crabb stated that, although the complaint failed to state a claim under federal law, the complaint "appears to contain a variety of state law claims" over which she declined to take supplemental jurisdiction in view of the failure of the complaint to allege claims under federal law.

David Whitcomb  
September 4, 1998  
Page 2

If you have any questions regarding the above, please give me a call.

Sincerely,



Robert M. Hunter  
Assistant Attorney General  
State Bar No. 1008114

RMH:ked  
Encl.

cc: Richard Grobshmidg, Glenn Grothman,  
Michael Sullivan, Phil Kingston,  
Thomas Borgen, Calvin Landaal,  
Dick Lemmens, Delores Kester,  
Charles D. Hoomstra,  
Linda Bredeson, Karen Gurholt

THIS IS NOT A STRIKE