



State of Wisconsin  
Department of Public Instruction

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John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent

March 13, 2000

Richard Zimmerman, District Administrator  
Hartford Union High School  
805 Cedar Street  
Hartford, WI 53027-2399

*C ✓ Frank  
Board  
Jim Mohr*

Dear Mr. Zimmerman,

This is in response to your letter dated February 10, 2000 requesting the Department of Public Instruction to review its administration of the transfer of service provision of the revenue limit statute as it relates to special education students who transfer in from K-8 school districts and union high school districts' ability to claim a transfer of service exemption. After a review and discussion with representatives from other state agencies, the department's interpretation of disallowing such claims does not change.

Students transferring from an underlying K-8 to a Union High School District are residents of its underlying taxing jurisdiction. Therefore, these students should be treated the same as students in a K-12 district. While the Department realizes the inherent differences between K-8, UHS and K-12 districts, the taxing jurisdictions are the same and that is the determining factor.

I encourage you to seek legislative support should you wish to pursue this matter further. The department will administer any change to the revenue limit transfer of service provision approved through the legislative process.

Please contact me should you have additional questions.

Sincerely,

David Carlson, Director  
School Financial Services Team

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HARTFORD UNION HIGH SCHOOL DISTRICT,

Plaintiff,

v.

Decision and Order  
Case No. 01-CV-0983

STATE OF WISCONSIN, DEPARTMENT  
OF PUBLIC INSTRUCTION, and  
ELIZABETH BURMASTER,

Defendants.

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Plaintiff Hartford Union High School District (HUHSD) seeks summary declaratory judgment pursuant to Wis. Stat. §806.04 declaring: (1) Transfers of special education (EEN) students from K-8 school districts to HUHSD, for which HUHSD must add responsibility for providing special education services, constitute transfers of services from another governmental unit within the meaning of Wis. Stat. §121.91(4)(a)(2), thereby allowing HUHSD to increase its revenue limits by the costs of such services provided; and (2) HUHSD's revenue limits have been eligible for such increases since at least the 1997-98 school year when they were first requested of defendant; or since the 1995-96 school year when such transfers actually occurred.

HUHSD also seeks to enjoin defendants the State of Wisconsin, the Department of Public Instruction and State Superintendent of Public Instruction Elizabeth Burmaster (collectively DPI) from denying HUHSD's requests for such increases to its spending limits under Wis. Stat.

§121.91(4)(a)(2). This court concludes that: DPI's policy interpreting Wis. Stat. §121.91(4) constitutes a rule; Wis. Stat. §277.40(1) provides the exclusive means for judicial review of the validity of a rule, which is as an action for declaratory judgment; Wis. Stat. §227.40(5) requires service upon the Joint Committee for Review of Administrative Rules (JCRAR); and because service upon JCRAR has not been effected, this court lacks jurisdiction to proceed with this action. However, because this preliminary procedural issue was not raised by DPI until after all pleadings had been filed and the merits of the underlying dispute had been fully briefed, this court accords HUHSD the opportunity to amend its complaint within 30 days of this order and to timely serve JCRAR.

#### FACTUAL BACKGROUND

HUHSD is organized as a union high school district, providing high school services to students in grades 9-12. Pursuant to this organizational structure, HUHSD accepts and enrolls students from various separate K-8 grade school districts in its area.

There are at least seven K-8 school districts that are in the same geographic area as HUHSD and that feed into that high school district. These K-8 districts provide special education services to students. The K-8 districts occupy different geographical boundaries than HUHSD; they are governed by their own school boards whose members are elected by the districts' electors; they are separate taxing authorities; they separately

comply with state revenue-limit statutes; they contract on their own; they sue and are sued on their own; they hold separate meetings; and they bargain collectively with separate unions. The residents of a union high school district simultaneously reside in both a union high school district and in one of its underlying K-8 districts. As a result, the residents are subject to two school property tax levies - one that provides revenue for the K-8 district and one that provides revenue to the union high school district. When an EEN-eligible student at a K-8 school completes his enrollment at a K-8 school and then enrolls at the union high school, the union high school increases its EEN services in order to provide EEN services for that student.

This structure is in contrast to the organizational structure of a K-12 school district that operates schools from kindergarten through 12th grade. Residents of a K-12 school district reside in only one school district and are subject to only one school property tax levy that provides revenue to all of grades K-12. HUHSD challenges the manner in which DPI has applied Wisconsin's school district revenue limit law to union high school districts.

Wisconsin Statute §121.91 imposes a revenue limit on Wisconsin school districts. The statute restricts the amount of revenue that a school district is allowed to raise through property taxes. Under the statute, the annual increase in a school district's per pupil revenue is limited to a specific amount that is annually adjusted for inflation.

However, the legislature has designated certain exceptions by which a school district's revenue limit may be adjusted up or down. Under Wis. Stat. §121.91(4)(a), a school district's revenue limit may be increased or decreased for transfers of service responsibilities. Subsection (4)(a)1. provides:

If a school board transfers to another governmental unit responsibility for providing any service that it provided in the preceding school year, the limit otherwise applicable under sub.(2m) in the current school year is decreased by the cost that it would have incurred to provide that service, as determined by the state superintendent.

Subsection (4)(a)2 provides:

If a school board increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in the previous school year, the limit otherwise applicable under sub.(2m) in the current school year is increased by the cost of that service, as determined by the state superintendent.

These statutes are administered by DPI. A school district seeking to increase its revenue limit must apply to DPI, which then determines the size of the allowable revenue limit increase, if any. DPI has created an application form for school districts to use when requesting a revenue limit increase for EEN students who transfer into the high school district. The form contains instructions along with guidelines and a lengthy list of specific examples of eligible and non-eligible requests. The form requires the requesting school district to provide all the information DPI needs to make its determination. The requesting school district, upon supplying the required information, must then forward the form to the school district that transferred the

service to the requesting school district. The transferring district must verify whether it previously provided the service for which the requesting district is seeking a revenue limit increase and it must itemize any reductions in its own costs realized as a result of the transfer. The form is then returned to the requesting school district, which submits the completed form to DPI for processing.

HUHS did not submit application forms pursuant to the above procedure. Frank Mastaw, HUHS business manager attests that beginning in the 1996-97 school year he notified DPI by phone that the district was receiving the responsibility of providing service for students transferring into the union high school district from K-8 districts. He requested an exemption from the revenue limit for the amount of those services. Mastaw was informed that DPI's interpretation of Wis. Stat. §121.91(4) was that transfers of students from K-8 school districts in the underlying union high school district did not qualify for an exemption. Mastaw attests that he was told not to bother submitting an application because his request would be denied.

In January 1998, DPI sent out a notice to all Wisconsin union high school districts inviting them to a February 1998 meeting to discuss the transfer of service exemption limits as they relate to K-8 and union high school districts. The invitation stated:

Significant legislative changes in the transfer of service exemption has caused the department to initiate a review of the transfer of service exemption requirements and eligibility. As students moving from

K-8 School Districts to Union High School Districts have not previously been eligible for a transfer of service exemption, the department wishes to receive input as to the impact that this exclusion has had on districts and how possible changes in eligibility may affect districts.

A summary of the discussion at the meeting reflects that DPI indicated that the reason for union high schools not being eligible for the transfer of service exemption was that the students involved were residents of the union high school district. According to the summary, it was the department's interpretation that union high school districts should be treated like K-12 districts, with no transfer of service exemption allowed between 8th and 9th grade for resident pupils. In addition, the summary of the discussion indicates that DPI believed it was beyond their current authority to allow an exemption for students transferring from K-8 districts without a subsequent reduction in the revenue limit of K-8s. The summary states:

Participants considered the following scenario: A student transfers to a K-8 from another district, and the K-8 receives a transfer of service exemption for its increased costs. When the student transfers to the UHS, the amount of the exemption transfers along with the student, assuming the UHS also has increased costs. The K-8 revenue limit decreases by the amount of the exemption while the UHS revenue limit increases by their increase in costs. Is this possible? Discussion points included the fact that the UHS would be allowed to "keep" the increase when the student graduated, while the K-8 had to give it up. Allowing the K-8 to "re-capture" the increase when the student graduated from the UHS would mean the UHS would then have to decrease its revenue limit. DPI indicated it could check into whether this is possible, but expressed concern over the administration and legality under the current law.

Another option discussed was a 66.30 agreement between the K-8 and UHS.

The meeting notes indicate that it was agreed to continue discussion of the issue and to discuss proposing legislative changes to accommodate the unique relationship between K-8 and UHS districts. DPI indicated that there would be no change for the 1998-99 school year.

On February 10, 2000, HUHS D sent DPI a letter asking DPI to review its position on transfer of service treatment between K-8 and UHS districts. On March 13, 2000, DPI responded by letter indicating that its interpretation of Wis. Stat. §121.91(4) remained unchanged. The letter stated:

Students transferring from an underlying K-8 to a Union High School District are residents of its underlying taxing district. While the Department realizes the inherent differences between K-8, UHS and K-12 districts, the taxing jurisdictions are the same and that is the determining factor.

I encourage you to seek legislative support should you wish to pursue this matter further.

#### PROCEDURAL BACKGROUND

HUHS D filed a complaint seeking a summary declaratory judgment in April 2001. The issue raised by HUHS D's complaint concerns DPI's interpretation of Wis. Stat. §121.91(4) when an EEN student currently residing simultaneously in a UHS district and an underlying K-8 district progresses from 8th to 9th grade and accordingly is no longer served by the K-8 district but begins to be served by the UHS district. HUHS D maintains that because the underlying K-8 districts are separate governmental units pursuant to the language of Wis. Stat. §121.91(4), the UHS

is entitled to a revenue limit increase for each underlying K-8 EEN student that progresses from the 8th to the 9th grade. By contrast, DPI interprets the statute to mean that revenue limit increases for transfers of EEN students are allowable only when the EEN student has changed his or her district of residence, not when a student already residing in the UHS district progresses from 8th to 9th grade.

Upon completion of the briefing on the merits, this court raised concerns about whether this matter was ripe for declaratory judgment resolution, given the submissions before the court. The parties were asked to address this issue with supplemental briefs. Both parties argued that the matter was ripe for declaratory judgment determination notwithstanding the fact that HUHSD had not filed formal written application forms with DPI seeking a revenue limit increase for specific students. However, in its Supplemental Brief DPI raised a new and separate procedural concern over whether this controversy was properly before this court as a request for declaratory judgment. DPI now argues that the proper procedural mechanism for reviewing this matter is as a ch. 227 judicial review of an administrative agency decision.

#### DISCUSSION

DPI advances the argument that because this controversy concerns a dispute over a state agency decision that adversely affects the substantial interests of a person, a statutory method of judicial review exists, specifically Wis. Stat. §227.53. DPI

argues that because a statutory method of judicial review exists, it provides the exclusive statutory method of judicial review and that deferential ch. 227 judicial review standards for reviewing administrative decisions should apply. State ex rel. First Nat'l Bank v. N & I People's Bank, 82 Wis. 2d 529, 537-38 (1978).

HUHSO, however, maintains that judicial review under ch. 227 is inappropriate and that this matter should be resolved in the procedural form HUHSO initially brought, as a declaratory judgment action.

HUHSO makes three arguments: (1) because DPI's policy for transfer of service exemptions at issue here have the effect of an agency "rule", Wis. Stat. §227.40 applies as the exclusive means of challenging DPI's determination and that statute requires resolution by declaratory judgment; (2) judicial review pursuant to Wis. Stat. §227.53 is only available to review contested case hearings; and (3) declaratory relief is available where no administrative procedure exists for considering a claimant's issue or where proceeding with the existing administrative procedure would be futile. The court begins by examining HUHSO's first argument challenging DPI's contention that review of DPI's interpretation of Wis. Stat. §121.91(4) is by Wis. Stat. §227.53 judicial review.

Wisconsin Statute §227.53(1) provides in pertinent part:

*Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter... (emphasis added)*

This subsection provides for an exception to judicial review

under §227.53 - where judicial review is otherwise specifically provided by law.

Wisconsin Statute §227.40(1) provides:

Except as provided in sub.(2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for Dane County. ... The court shall render a declaratory judgment in such action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff.

Whether §227.40(1) applies in this instance requires this court to determine whether DPI's policy interpreting §121.91(4) constitutes an administrative rule, notwithstanding the fact that the policy has not been formally promulgated as an administrative rule under ch. 227's rulemaking procedures.

Wisconsin Statute §227.01(13) defines an administrative rule as:

... a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.

The Wisconsin Supreme Court has addressed the question of what constitutes an administrative rule in Frankenthal v. Wisconsin Real Estate Brokers' Board, 3 Wis. 2d 249 (1958). In Frankenthal, the state real estate brokers' board followed a new board policy set forth in mimeographed instructions when it refused to issue a broker's license to a partnership because one of the partners was not individually licensed as a broker. The

court held that the instructions constituted a rule:

When a party files an application for a license with an administrative agency and the latter points to some announced policy of general application as a reason for rejecting the application, such announced policy constitutes a rule, the validity of which the applicant is entitled to have tested in a declaratory action instituted pursuant to sec. 227.05, Stats. However, if the application is rejected because of some ruling which is not applicable generally but is limited to the facts presented by the applicant ... such a ruling does not constitute a 'rule' under ch. 227, Stats.

Id. at 257b.

Likewise in the instant case, nothing in DPI's policy regarding transfers of service from underlying K-8 districts to UHS districts is factually limited specifically to HUHSD. DPI relied on this policy as a principle or rule. The policy controls DPI's administrative actions and DPI's determinations applying this policy directly affect the impacted school districts' rights. The submissions before this court indicate that the transfer of service policy interpreting Wis. Stat. §121.91(4) applies to all K-8 and UHS districts and therefore has the effect of law. Accordingly, this court concludes that DPI's policy constitutes an administrative rule as defined by Wis. Stat. §227.01(13) and as applied in Frankenthal.

Under Wis. Stat. §227.40, the exclusive means of judicial review of the validity of a rule is an action for declaratory judgment. Subsection (4)(a) provides that: "In any proceeding pursuant to this section for judicial review of a rule, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of

the agency or was promulgated without compliance with statutory rule-making procedures." An administrative rule that conflicts with an unambiguous statute exceeds the authority of the agency that promulgated it. Seider v. O'Connell, 2000 WI 76 ¶28, 236 Wis. 2d 211. HUHSD contends that Wis. Stat. §121.91(4) is unambiguous and that DPI's transfer of service policy as applied to K-8 and UHS districts conflicts with that statute's unambiguous language. Therefore, HUHSD is challenging the validity of DPI's rule and this court concludes that the appropriate procedural mechanism for this court's review of DPI's policy is as an action for declaratory judgment under Wis. Stat. §227.40.

Normally, the next step would be for this court to examine Wis. Stat. §121.91(4) to determine if its language is unambiguous and if DPI has exceeded its authority. However, having determined that Wis. Stat. §227.40 applies, this court is presented with another procedural hurdle. Wisconsin Statute §227.40(5) *requires* that the joint committee of review of administrative rules (JCRAR) be served with a copy of the petition in any action under this section, and with the approval of the joint committee on legislative organization, JCRAR shall be made a party and be entitled to be heard. Wis. Stat. §227.40(5). The statute is not permissive and the Wisconsin Supreme Court has held that service must be made within 60 days after filing a complaint. Richards v. Young, 150 Wis. 2d 549, 554-55 (1989). The 60 day period affords JCRAR the opportunity

to discuss the case with the joint committee on legislative organization and to either avoid the litigation by suspending the rule or to defend the rule in court. Id. Where statutory requirements for obtaining judicial review are not fully complied with the circuit court's subject matter jurisdiction cannot be invoked. Id. at 557.

In this instance, the JCRAR has not been served. However, the reason JCRAR has not been served is because the question of the proper procedural mechanism for this court's review of DPI's policy was not raised either by this court or by DPI until after HUHS'D's complaint had been filed and the merits briefed. Accordingly, this court grants HUHS'D leave to file an Amended Complaint within 30 days of this decision and to timely serve JCRAR.

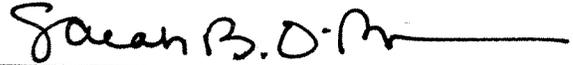
This court recognizes and acknowledges that the parties are eager for a decision on the merits of this controversy without further procedural delays. However, this court's subject matter jurisdiction cannot presently be invoked and a court's loss of competence to proceed due to the failure to comply with a statutory mandate cannot be waived. In Interest of B.J.N., 162 Wis. 2d 635 (1991).

ORDER

For the reasons stated above, this court is presently unable to proceed to address the merits of this action. HUHSD is ordered to file an Amended Complaint by October 25, 2002 and to timely serve JCRAR. JCRAR shall have 20 days from date of service to file a brief in this matter or waive its right to do so. If JCRAR files a brief, the other parties may respond within 10 days of the date JCRAR's brief is filed and the case will then be decided by the court.

DATED: October 1, 2002

BY ORDER OF THE COURT:



Sarah B. O'Brien, Judge  
Circuit Court, Branch 16

BY \_\_\_\_\_  
Clerk of Court  
GARY H. HANBLIN  
CLERK OF COURT  
CIRCUIT COURT, BRANCH 16  
MAY 1 2002

Jay A. Starkweather #18514  
Columbia Correctional Inst  
2925 Columbia Drive  
P.O. Box 900  
Portage, WI 53901-0900

7000 1530 0003 8456 6897



MA

Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
Attn: Senator Judith Robson

Legal Service, sent  
1st Class U.S. Mail,  
Certified with Return  
Receipt Requested.  
Sent August 22 /02.

**NOTICE OF CLAIM AND INJURY**

(Pursuant to Wis. Stat. 893.82)

**TO:** Office of the Attorney General  
Wisconsin Department of Justice  
123 West Washington Avenue  
P.O. Box 7857  
Madison, Wisconsin 53707

AUG 26 2002

**FROM:** Jay A. Starkweather #185145  
Columbia Correctional Institution  
2925 Columbia Drive  
P.O. Box 900  
Portage, Wisconsin 53901

**State Employees Involved**

Social Worker Mark Kohn, Housing Unit Manager Dave Ditter, Warden Phil Kingston, Deputy Warden Gregg Grams, Program Services Coordinator Mardell Petras, Security Director Timothy Douma, DAI Steven Casperson, ICE William Nolland, CCE John Ray, DOC Chris O'Donnell (Office of the Secretary), DOC Secretary Jon E. Litscher, CCI Sgt. Pulley, AG James E. Doyle, JCRAR Senator Judith Robson, JCRAR Representative Glenn Grothman.

**Places of Involvement**

Columbia Correctional Institution ("CCI")

**Time/Date of Incident**

May 1, 2002; June 14, 2002 and ongoing

**Notice of Claim**

Jay A. Starkweather, hereby gives formal notice of claim and injury and intent to file a legal action against the above-named state employees and entities pursuant to Wis. Stat. 893.82 (1-7).

Complainant hereby incorporates the following attached and enclosed supporting documents:

1. Affidavit of Jay A. Starkweather.
  2. "I - III:" REQUEST FOR CORRECTIONS COMPLAINT EXAMINER REVIEW.
  3. "A - G:" original OFFENDER COMPLAINT, Addendum to same, and supporting documents.
  4. "H - J:" CORRECTIONS COMPLAINT EXAMINER'S REPORT and OFFICE OF THE SECRETARY'S REPORT.
  5. Certificate of Service by Mail.
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**Statement of circumstances of event giving rise to the claim for such injury, damage or death and names of persons involved including name(s) of State officials, Agent(s), or Employee(s):**

On **May 1, 2002** at 2:00 p.m., a "properly placed" attorney-client privileged call was made from a "dayroom" telephone. Sgt. Pulley was leaning back against the wall by the telephone, placing him within 3-4 feet from my position. He marked the "NAME OF STAFF SUPERVISING CALL," and both "TIME CALL INITIATED" and "TIME CALL TERMINATED" portions of (A). Mark Kohn, CCI Security, Program Services, the Warden's Office, HU6 Manager Dave Ditter and others have the completed copy of same. Various inmates were present during my call at and near Sgt. Pulley, making it impossible to adequately hear and confer with counsel. Counsel also heard various inmates and CCI staffs' voices during our call.

My privileged call was repeatedly interrupted by a recorded message, and was terminated. I had to redial my attorney every 15 minutes, restarting the process. See C in entirety.

On **June 14, 2002**, another "privileged" call was made at 2:20 p.m.. I was let out 20 minutes late for this call. It was "instant replay" of my May 1/02 call. Same interruptions via recorded message, having to redial my attorney, and CCI Staff and inmates in the dayroom. My attorney was livid. He said "Mark Kohn promised a secure room for this call," terminated the call, then proceeded to call Mark Kohn (who was "out" again), and Dave Ditter, who by then was sitting in the Dayroom.

Mr. Ditter appeared at about 2:35 p.m. after I complained to COII Schoup and COII Beawick of the same problems as my May 1/02 call. Officer Beawick stood close to the telephone bank, Schoup graciously stood across the Unit. After I requested access to the Conference Room, HU6 Education Core, or Program Services, Mr. Ditter refused, stating "who's going to monitor your call?" I replied "All attorney calls are supposed to be unmonitored, yet if someone needs to supervise a call, that's what support staff, Mark Kohn or yourself are here for." No reply.

At 3:10 p.m. Mardell Petras arrived after Ditter made some calls, simply filled out a "Telephone System Problem Report" similar to (enclosed G), then left. Despite an identical problem as my May 1/02 call, and the Conference Room being available, no one immediately rectified it although there were plenty of staff available for same.

I had to reinitiate a third call at 3:36 p.m.. Mr. Ditter then sat in the Officer's chair, leaned back and intentionally had a loud discussion with Officers' Schoup and Beawick within about 3 feet from the telephone I was using. My attorney noted the background noise.

#### Statement of Claims:

1. The above "attorney-client privileged telephone access" violates my, and all other similarly situated prisoners' First, Fifth and Sixth Amendment right to confer with counsel; Article 1, Section 7 of the Wisconsin Constitution, various Statutory laws, DOC IMP's and Administrative Codes listed below.

A. CCI (and other unknown Wisconsin institutions) that follow this practice are violating DOC IMP 41; DOC 309.01; 309.39(1), (2)(a)(d), (6)(a); and Wis. Stat. 905.03(1)(d) and (3); chilling the attorney-client privilege guarantees. See: C enclosed in entirety with "Applicable Law" and "Conclusion."

2. After complaining to Dave Ditter May 1, 2002 (Mark Kohn was out during my call), and essentially being ignored, the original Complaint was filed. See: B in entirety.

3. A subsequent Addendum was filed May 16, 2002 and summarily rejected by ICE William Nolland May 21, 2002. See: D - F, I and II. Nolland claims the decision was "finalized" by May 16/02.

4. C above (n. 5 and 6) avers to Complainant's well-documented handicap accessibility problems and hearing impairments. Additionally, both fall under the Americans With Disabilities Act of 1990 and subsequent A.D.A. precedent. CCI is aware of both issues.

5. I and J (CORRECTION COMPLAINT EXAMINER'S REPORT) conveniently ignores the heart of this Complaint and simple solutions:

A. CCI does possess the resources to accommodate sanctioned calls. They have the Housing Unit Conference Rooms, which were designed for this purpose. Further, the Conference Rooms are currently utilized for personal, legal, and "time and charges" calls. Yet social worker Mark Kohn simply refuses to accommodate anyone with legitimate handicap issues and legal needs. I.e., "emergency legal calls" or routine and necessary legal calls; and Dave Ditter refuses to override his actions.

B. The Education Cores are available on all Units.

C. Program Services rooms are available and are utilized for these calls, tele-conference calls and court hearings.

CERTIFICATE OF SERVICE BY MAIL

**Notice Of Claim of Jay A. Starkweather**

The undersigned, being competent to serve papers, does hereby swear and certify under penalty of perjury, that on the date shown below, he did place in the Columbia Correctional Institution (CCI) Mailbox, the following documents:

1. One Notice Of Claim And Injury pursuant to Wis. Stat. §893.82;
2. One attached Affidavit of Jay A. Starkweather;
3. Enclosures "I - III" (3 pages);
4. Enclosures "A - G" (10 pages);
5. Enclosures "H - J" (4 pages).
6. One Certificate of Service By Mail for each party below.

The above documents were served 1st Class, Certified/Return Receipt Requested United States Mail.

First Class Postage Paid for the United States Mail, and addressed to:

Office of the Attorney General  
123 West Washington Avenue  
P.O. Box 7857  
Madison, Wi 53707-7857

"J.C.R.A.R."  
Room 15 S., State Capitol  
P.O. Box 7882  
Madison, Wi 53707-7882  
Attn: Senator Judith Robson

"J.C.R.A.R."  
Room 15 N., State Capitol  
P.O. Box 7882  
Madison, Wi 53707-7882  
Rep. Glenn Grothman

Dated this 22 day of August, 2002.

Subscribed and sworn to  
before me this 22nd day  
of August, 2002

Shirley M. Rypke Notary Public.  
Columbia County, Wisconsin.  
My commission expires 04-09-06

Jay A. Starkweather  
Jay, A. Starkweather, #185145  
Columbia Correctional Institution  
2925 Columbia Drive, P.O. Box 900  
Portage, Wisconsin 53901-0900

~~No Notary Service available today. The above is sworn to under penalty of perjury.~~

6. HU 6 social worker Mark Kohn, Housing Unit Manager Dave Ditter, and Program Services Coordinator Mardell Petras refused and still refuse me usage of the "Conference Room," "Education Core" room or Program Services for this and all privileged calls; notwithstanding my prior complaints reiterating my well-documented hearing and wheelchair disabilities and further ongoing privacy concerns.

The fact the dayroom facilities allow absolutely no attorney-client privacy with various inmates and CCI staff members entering and exiting the dayroom denies my right to effectively speak with my attorney, let alone adequately hear his voice. This directly violates current precedent and the Americans With Disabilities Act Of 1990.

7. The CCE ignores the fact DOC 309.405 is not the only rule -- IMP, DOC, Wis. Statutory, Federal and U.S. precedent; that "govern(s) inmate telephone calls to attorneys." (See I, lines 5 & 6). Then the CCE conveniently cites Webster's Dictionary when it suits their purpose, yet ignores the heart of this Complaint.

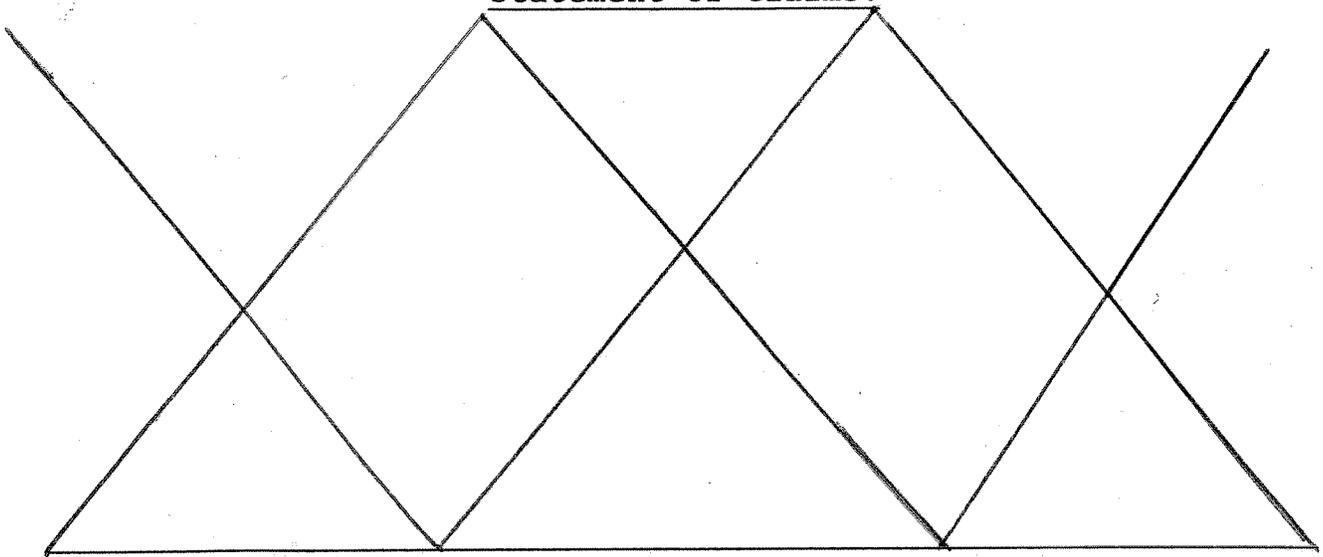
8. The CCE ignores the fact my handicap negates the use of the "privacy wings," and never bothered to check CCI Health Services Unit nor my file for my hearing impairment or wheelchair use. The privacy wings are useless to someone with my health problems.

9. Further, that Mr. Ray was "advised that CCI 'will make every effort' to assure that there is minimal inmate movement in the dayroom ..." is nonsense. (See above Page 1, paragraphs 4 and 5; Page 2 paragraphs 1 and 2), and attached Affidavit of Jay A. Starkweather.

CCI has done absolutely nothing to change this situation and Mr. Ditter's actions June 14/02 call are reprehensible. Mark Kohn is equally culpable in this sham of "privileged attorney calls" at CCI. Deputy Warden Grams' knowledge of these issues makes him as culpable, and Warden Kingston's dismissal admits knowledge of same.

10. Finally, CCE John Ray's "belief" has no bearing on the legality of CCI's violations. Opinions have no business here, or in any valid Complaint.

Statement of Claims:



Statement of Relief Sought:

Prior To Court Action:

1. Adherence to Wis. Stat. 905.03(1)(d), United States and Federal legal precedent as to attorney-client privileged calls.
2. Make available CCI Conference Room, Education Core and/or Program Services as needed for "properly placed" attorney calls.
3. Modify IMP's & DOC Administrative Codes to adhere to the Law.

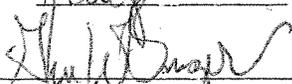
If Court Action Is Required:

1. Modify CCI facilities to adhere to above #'s 1 - 3.
2. Modify CCI facilities to adhere to the A.D.A. of 1990.
3. Compensatory and punitive damages to be set by the Court.
4. All costs and fees relating to this action.
5. Any other relief ordered by the Court.

I hereby certify that all statements contained herein are true, correct and complete to the best of my knowledge; and that the injury, damage or death actually occurred.

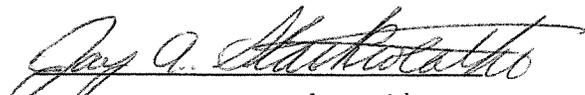
Dated this 15 day of Aug, 2002 at Portage, Wisconsin

Subscribed and sworn to before me this 15<sup>th</sup> day of Aug, 2002.

  
Notary Public.

My commission expires 12/1/02

Respectfully submitted,

  
Jay A. Starkweather

AFFIDAVIT OF JAY A. STARKWEATHER

STATE OF WISCONSIN )  
 )  
 )  
COUNTY OF COLUMBIA )

Notice Of Claim And Injury pursuant  
to Wis. Stat. 893.82 (1-7)

I, Jay A. Starkweather, being duly sworn on oath, do hereby swear, depose, and state the following based on personal knowledge and being legally able to attest to the following facts:

1. This affidavit is attached to my 5-page Notice Of Claim And Injury.
2. All information contained in the attached document is true, correct and complete to the best of my knowledge and belief.
3. I did not file a CCI OFFENDER COMPLAINT on my June 14, 2002 privileged attorney-client call due to past CCI Institution Complaint Examiner William J. Nolland's summarily denial of any and all Inmate Complaints which are similar in nature to a prior Complaint.
  - A. Any Complaint filed on my June 14, 2002 call would be futile.
  - B. This information was included to show a "pattern and practice" of CCI's past and ongoing violations of my and similarly situated inmates' Constitutional right(s) to privileged attorney-client telephone calls.
4. If litigation becomes necessary, similar conduct will be clearly shown through past CCI actions and conduct.
5. The enclosed documents were served 1st Class, Certified/Return Receipt Requested United States Mail.

Said documents were Mailed Thursday, August 22, 2002.

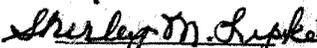
Dated this 22 day of August, 2002. Portage, Wisconsin.

JAS/File.

Respectfully submitted,

Subscribed and sworn to  
before me this 22nd day  
of August, 2002

  
 Jay A. Starkweather #185145  
 Columbia Correctional Institution  
 P.O. Box 900  
 Portage, Wisconsin 53901-0900

 Notary Public.  
 My Commission expires 04-09-06

~~No Notary Service available this day.  
The above is sworn to under penalty of perjury.~~

# REQUEST FOR CORRECTIONS COMPLAINT EXAMINER REVIEW

- INSTRUCTION:** 1. Prepare an original and one copy of this request. Please print or type.
2. Keep the copy of this request for your records and send the original, in a sealed envelope, to:

CORRECTIONS COMPLAINT EXAMINER  
OFFICE OF AUDITS, INVESTIGATIONS & EVALUATIONS  
PO BOX 7925  
MADISON, WI 53707-7925

<b>PART I - MUST BE COMPLETED</b>			
-----------------------------------	--	--	--

OFFENDER NAME	DOC NUMBER	INSTITUTION (Abbreviate)	COMPLAINT FILE NUMBER
<b>Jay A. Starkweather</b>	<b>185145</b>	<b>CCI</b>	<b>CCI-2002-16865</b>

STATE BRIEFLY WHY YOU ARE NOT SATISFIED WITH THE ACTION OF THE WARDEN

Complainant has sequentially-included all documentation submitted and received ("A"- "G") to provide full exhaustion of all available administrative remedies. Complainant responds to (CCI's) ICE dismissal and Warden Kingston's upholding same with the following:

Background

A is CCI Social Worker Mark Kohn's "Request To Make Telephone Call" noting "ATTORNEY PHONE."

B is the original complaint received May 14/02, "dismissed" by ICE William Nolland May 15/02 (E), and upheld by Warden Kingston May 21/02 (F).

C is Complainant's "Addendum" submitted May 16/02, clarifying the original complaint while offering an additional simple solution of utilizing the Housing Unit 6 Conference Room (see also: B, page 2 also noting CCI Program Services facilities). As stated, neither option places any undue burden(s) on Staff.

D is a copy of an attached (unsigned) "post-it" note received May 21/02 by the ICE stating "This complaint is answered and done." This was the same day Warden Kingston affirmed the dismissal.

In E (Institution Complaint Examiner's Report), ICE Nolland stated he didn't contact me. Curiously, I spoke with him May 20/02 at length about 8:45 a.m. on HU 6. To my recollection, he never once mentioned the complaint was "finalized," nor was my Addendum "rejected." Complainant received the Addendum back May 21/02 at Mail call; then E and F May 22/02.

In the Institution Complaint Examiner's Report (E) Nolland states "At this time this is the only phone that can be used for attorney calls using the state phone call system ... The ICE agrees ... that it would be ideal to utilize a separate room for these calls however, at this time due to the residents at CCI, the physical plant of the institution, and existing phone lines it simply cannot be done."

Complainant's assertions

1. Complainant stands on all documents and case law precedent submitted herein.

2. The above quote from the ICE misstates the fact CCI Program Services is available for properly placed attorney-client confidential phone calls. It is used regularly for same. Also, various CCI Units utilize the Housing Unit Conference Rooms for privileged calls, via the Social Workers.

The ICE ignores the heart of the complaint: attorney-client confidentiality. No one can make a privileged call and expect to be totally candid with one's lawyer when a Staff member is so close, or other people are moving about the Unit. This chills the attorney-client privilege.

The original intent of the HU Conference Room(s) was for this express purpose, as well as confidential Staff interviews, etc..

3. Complainant spoke with HU 6 Manager Dave Ditter May 28/02 at 2:30 p.m., regarding the above. Mr. Ditter stated several interesting things: since the Conference Room(s) contain controlled medications, inmates could "break into" these locked cabinets to obtain drugs. This is absurd at best. An officer and Social Worker are always present when any call is made. The inmate is clearly seen through a huge window at the desk.

He stated a Staff member must always be present to monitor the inmate. This is true. However, the locked controlled medication cabinets can easily be placed in the dayroom to eliminate any perceived problem; and this statement has no bearing on privileged calls.

Notwithstanding a perceived problem here, Complainant mentioned Program Services, which is utilized for this purpose. From Complainant's recollection, Mr. Ditter merely said "I'm not going to deviate from any CCI policy."

Conclusion

The ICE and Wardens' dismissal ignores the heart of this Complaint. Various Constitutional and DOC violations are occurring on an ongoing basis due to CCI's actions. There are two simple solutions to this problem which are clearly addressed in these submittals. Neither places an undue burden on CCI, nor the DOC. Complainant respectfully requests the Corrections Complaint Examiner reverse the decision, and simply rectify this situation.

JAS/File.  
Enclosures.

Respectfully submitted,

  
Jay A. Starkweather

Addendum: This morning Dave Ditter informed me he after investigating my call, it was "recorded." He said the phone company was being contacted. I find it ironic ICE Nolland's "investigation" never uncovered this. See: attachment G & C (Addendum).

CERTIFICATE OF SERVICE BY MAIL

Administrative Exhaustion "2nd step"  
of CCI-2002-16865.

The undersigned, being competent to serve papers, does hereby swear and certify under penalty of perjury, that on the date shown below, he did place in the Columbia Correctional Institution (CCI) Mailbox, the following documents:

1. 1 (one) original "Request For Corrections Complaint Examiner Review" (2 pages);
2. Enclosures A - G (10pages total).
3. 1 (one) original Certificate Of Service By Mail.

End of submittals

First Class Postage Paid for the United States Mail, and addressed to:

Corrections Complaint Examiner  
Office of Audits, Investigations & Evaluations  
P.O. Box 7925  
Madison, Wi 53707-7925

Dated this 30 day of May, 2002.

Subscribed and sworn to  
before me this 30 day  
of May 2002.

Wanda D. [Signature]  
Notary Public.  
Columbia County, Wisconsin.  
My commission expires 12/8/02

Jay A. Starkweather [Signature]  
Jay, A. Starkweather, Pro Se  
Columbia Correctional Institution  
2925 Columbia Drive, P.O. Box 900  
Portage, Wisconsin 53901-0900



### OFFENDER COMPLAINT

INSTRUCTION SEE REVERSE SIDE

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Jay A. Starkweather		185145
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
CCI	6	20

TO BE FILLED IN BY ICE ONLY	
DOC COMPLAINT FILE NUMBER	
DATE COMPLAINT RECEIVED	
CODE NUMBER	

DATE OF INCIDENT OR DENIAL OF REQUEST  
**May 1, 2002 (and ongoing)**

**Issue: Staff monitoring of properly placed Attorney-Client telephone call(s), in violation of DOC 309 IMP 41; DOC 309.01; 309.39 (1); (2)(a)(d); (6)(a); Wis. Stat. Sec. 905.3(1)(d) & (3); (905.03)**

STATE YOUR COMPLAINT  
**and the 1st, 5th and 6th Amendments to the U.S. Constitution; and Article 1, Section 7 of the Wis. Constitution.**

An above-sanctioned attorney-client privileged call was made May 1, 2002 at 2:00 p.m., at a Dayroom telephone. Sgt. Pulley sat about 3 feet from this telephone, and various inmates were present.

DOC 41 excepts any monitoring of "authorized properly placed attorney calls." DOC 303.39 (2)(a) & (d) state "The warden shall establish 'facilities' for inmate telephone use;" & (d) establishes "properly placed" attorney calls."

DOC 309.39 (6)(a) states: "A corrections officer or supervisor "may not knowingly monitor (or record) a properly placed telephone call to an attorney ... 'knowingly' means ... is aware that an inmate has obtained approval from the appropriate staff member for the telephone call ...."

Wis. Stat. Sec. 905 (1)(d) states "A communication is 'confidential if not intended to be disclosed to 3rd persons ...." (6) defined "Who May Claim The Privilege."

While not all inclusive, Dayroom telephone use violates the above DOC  
**(Continued on Page 2)**

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

Sgt. Pulley, Mark Kohn, Counsel for Complainant, et al.

SIGNATURE OF OFFENDER OR SPOKESPERSON

DATE SIGNED

*Jay A. Starkweather* B

may 13, 2002

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

IMP(s), Administrative Code, and both Constitutions of privileged Attorney-Client communications.

There are Unit conference rooms available, as well as Program Services. Using either facilities places no undue burden on CCI Staff or Administrators.

Federal Circuit Court case precedent is well-documented regarding the sanctity of these calls, including U.S. S. Ct. law.

Inmates have a Constitutional right to unmonitored Attorney-Client telephone calls.

There are "lesser-restrictive" methods under Turner v. Safley, 107 S.Ct. 2254 (1987).

CCI should utilize the above Unit Conference rooms and/or Program Services.

Respectfully submitted,



Jay A. Starkweather

JAS/File.  
File copies et al.

# OFFENDER COMPLAINT

**INSTRUCTION SEE REVERSE SIDE**

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Jay A. Starkweather		185145
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
CCI	6	20

TO BE FILLED IN BY ICE ONLY
DOC COMPLAINT FILE NUMBER
DATE COMPLAINT RECEIVED
CODE NUMBER

DATE OF INCIDENT OR DENIAL OF REQUEST  
**May 1, 2002 (and ongoing)**

Addendum to CCI-2002-16865, filed Tuesday, May 14, 2002 .

STATE YOUR COMPLAINT

Clarification of Complaint with additional facts and supporting law:

1. **FACTS:** Complainant's calls were interrupted with a recorded voice message from the carrier during his attorney-client consultation.

2. Complainant's calls were terminated every 15 minutes, resulting in three (3) total calls being made. Complainant obviously had to redial his attorney; restarting the entire process of the above interruptions.

3. Counsel, after hearing the carrier interruptions, became concerned my properly placed attorney call was being monitored. After advising him an Officer was within 3 feet of me, he was even more concerned. When he heard inmates in the background at about 2:25 p.m., he was appalled.

4. He stated, to his knowledge, other institutions use "Conference Rooms" whereby attorney-client calls are unmonitored throughout their duration, with a table for inmates to organize and access their legal materials to facilitate the attorney-client communication.

5. CCI's "attorney-client telephones" provide absolutely no privacy.

Further, the cord is too short for adequate wheelchair accessibility,

(Continued on Page 2)

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

Sgt. Pulley, HU6 Staff, HU6 Manager Dave Ditter, HU6 Social Worker Mark Kohn, CCI Security Director Tim Douma, DAI Steven Casperson, Warden Kingston, et al.

SIGNATURE OF OFFENDER OR SPOKESPERSON

DATE SIGNED May 16, 2002

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

there is inadequate space for legal materials to be placed by an inmate to aid in a privileged call, and when there is inmate movement during a call, it is impossible to hear one's attorney with a hearing-impairment.

6. Complainant has a well-documented hearing impairment.

7. When an attorney call is completed, CCI Staff immediately "log" the termination-time, and this form is forwarded to the Social Worker (DOC 2\_5 (?) (Rev. 05/90)).

8. Complainant avers other CCI Social Workers utilize the "Conference Rooms" for properly placed attorney-client calls.

A. Complainant avers CCI Program Services is utilized for same above.

#### Applicable Law

I. In challenging government officials' claim of qualified immunity, plaintiff bears burden of establishing existence of constitutional right by citing closely analogous cases decide before officials acted or failed to act. Sturdevant v. Haferman, 798 F.Supp. 536 (E.D.Wis. 1992).

II. Thornburgh v. Abbott, 109 S.Ct. 1874 (1989), acknowledges several categories of First Amendment-based access to prisoners; attorneys included. See Adams v. Carlson, 488 F.2d 619 (7th Cir.1973) states "oral intercourse has been hedged with similar protection."

III. Persons deprived of their liberty in state institutions have a fundamental due process right of access to the courts to challenge the validity of their confinement and interference with this fundamental federal right will be enjoined by a federal court. Johnson v. Avery, 89 S.Ct. 747 (1969).

#### Conclusion

A. Complainant reasserts his challenge to the above violations of the attorney-client privilege under the various cited DOC regulations, U.S. & Wisconsin Constitutions, due process, & access to the courts; and hereby exhaustion of his administrative remedies. State ex rel. Smith v. McCaughtry; 586 N.W.2d 63 (COA 1998).

B. Due to the fact Complainant makes infrequent privileged calls, the simplest remedy is to allow him to utilize the HU6 Conference Room. This places no undue burden on CCI Staff, protects my Constitutional rights, and is the most logical solution.

Respectfully submitted,



Jay A. Starkweather

JAS/File.  
File copies et al.  
Attached 5/1/02 initial Complaint.

# OFFENDER COMPLAINT

**INSTRUCTION SEE REVERSE SIDE**

OFFENDER NAME (If group complaint, enter name of spokesperson) DOC NUMBER

Jay A. Starkweather

185145

INSTITUTION NAME OFFENDER HOUSING UNIT CELL OR ROOM NUMBER

CCI

6

20

DATE OF INCIDENT OR DENIAL OF REQUEST

May 1, 2002 (and ongoing)

Addendum to CCI-2002-16865, filed  
Tuesday, May 14, 2002 .

STATE YOUR COMPLAINT

Clarification of Complaint with additional facts and supporting law:

1. **FACTS:** Complainant's calls were interrupted with a recorded voice message from the carrier during his attorney-client consultation.

2. Complainant in three (3) total calls to his attorney; received no answer.

3. Counsel advised that my proper recourse was to have the right to appeal the complaint. When I was appalled.

4. He stated that all institutions use "Conference Rooms" whereby attorney-client calls are unmonitored throughout their duration, with a table for inmates to organize and access their legal materials to facilitate the attorney-client communication.

5. CCI's "attorney-client telephones" provide absolutely no privacy.

Further, the cord is too short for adequate wheelchair accessibility,

(Continued on Page 2)

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

Sgt. Pulley, HU6 Staff, HU6 Manager Dave Ditter, HU6 Social Worker Mark Kohn, CCI Security Director Tim Douma, DAI Steven Casperson, Warden Kingston, et al.

SIGNATURE OF OFFENDER OR SPOKESPERSON

DATE SIGNED

May 16, 2002

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

TO BE FILLED IN BY ICE ONLY	
DOC COMPLAINT FILE NUMBER	
DATE COMPLAINT RECEIVED	
CODE NUMBER	

recvd 5/21/02

Scott McCallum  
Governor



ICE REPORT  
CCI-2002-16865

Jon E. Litscher  
Secretary

# State of Wisconsin

Department of Corrections

## INSTITUTION COMPLAINT EXAMINER'S REPORT

**To:** STARKWEATHER, JAY A # 185145  
UNIT: 06 - 20  
COLUMBIA CORRECTIONAL INSTITUTION  
PO BOX 950  
PORTAGE, WI 53901-0950

rec'd 5/22/02

**Complaint Information:**

DOC Complaint Number:

Date Complaint Received:  Inmate Contacted?

Subject of Complaint:

Person Interviewed:

Documents Relied Upon:

Brief Summary:

Summary of Facts:

ICE Recommendation:

Scott McCallum  
Governor



ICE REPORT  
CCI-2002-16865

Jon E. Litscher  
Secretary

# State of Wisconsin

Department of Corrections

## INSTITUTION COMPLAINT EXAMINER'S REPORT

---

Examiner's Signature:

Decision Date: Wednesday, May 15, 2002

Print Date: Tuesday, May 21, 2002

A handwritten signature in black ink, appearing to read 'W. J. Litscher'.

Scott McCallum  
Governor



Reviewer's Decision  
CCI-2002-16865

Jon E. Litscher  
Secretary

**State of Wisconsin**  
**Department of Corrections**  
**Reviewer's Decision on Complaint**

To: STARKWEATHER, JAY A # 185145  
UNIT: 06 - 20  
COLUMBIA CORRECTIONAL INSTITUTION  
PO BOX 950  
PORTAGE, WI 53901-0950

rec'd 5/22/02

**Complaint Information:**

DOC Complaint Number:

Date Complaint Received:

Subject of Complaint:

ICE Brief Summary:

ICE Recommendation:

Reviewer's Decision:

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

**Reviewer's Comments:**

If you are adversely affected by the decision, you have 10 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.

CC'd:

Decision Date: Tuesday, May 21, 2002

Reviewer's Signature:

A handwritten signature in black ink that reads "Paul Kingston".

F

COLUMBIA CORRECTIONAL INSTITUTION

MCI INMATE TELEPHONE SYSTEM PROBLEM REPORT

(Submit to Word Processing Daily for Submission to MCI)

(Please Print)

Date: May 28, 2002 Housing Unit: 6 Name of Staff Member Completing Form: CO Schapp

Inmate Name	Case #	Telephone Number Called (Must Include Area Code)	Time of Call	Inmate Phone Used			Description of Problem
				1	2	3	
Jay Starkweather	185145	414-283-9300	2:00 pm		XX		Interruptions during each call with recorded prison warning. Had to redial the number twice. This was a scheduled attorney-client call. ICE filed; Dave Ditter said to file this report today (May 28, 2002).
<i>Call was made May 1, 2002</i>							

Please fill form out completely. Form MUST be legible for transmission to MCI via CCI's fax machine.

Distribution: Original: Housing Units: Route to Word Processing Within One Day  
 Word Processing: Forward To Business Director for Filing

Scott McCallum  
Governor



CCE RECEIPT  
CCI-2002-16865

20

Jon E. Litscher  
Secretary

# State of Wisconsin

Department of Corrections

**\*\* ICRS CONFIDENTIAL \*\***

**To:** STARKWEATHER, JAY A # 185145  
UNIT: 06 - 20  
COLUMBIA CORRECTIONAL INSTITUTION  
PO BOX 950  
PORTAGE WI 53901-0950

JUN 6 REC'D *JW*

**Complaint Information:**

DOC Complaint Number: **CCI-2002-16865**

Date Acknowledged:

June 4, 2002

Subject of Complaint:

Rules

Brief Summary:

Complains that Sgt. Pulley sat about 3 feet away while he placed an attorney phone call; he wants unmonitored attorney calls.

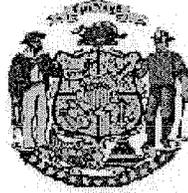
Your request for review has been received.

You can expect a decision by the Secretary within 47 working days. If you do not receive a decision or other notices within that time, you may write directly to:

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

H

Scott McCallum  
Governor



CCE REPORT  
CCI-2002-16865

Jon E. Litscher  
Secretary

## State of Wisconsin Department of Corrections

### CORRECTIONS COMPLAINT EXAMINER'S REPORT

**To:** STARKWEATHER, JAY A # 185145  
UNIT: 06 - 20  
COLUMBIA CORRECTIONAL INSTITUTION  
PO BOX 950  
PORTAGE WI 53901-0950

*received 7/2/02 pad.*

**From:** Corrections Complaint Examiner  
Office of Audits, Investigations and Evaluations  
P.O. Box 7925  
Madison, WI. 53707-7925

**RE:** Complaint File #: CCI-2002-16865

**Name:** STARKWEATHER, JAY A # 185145

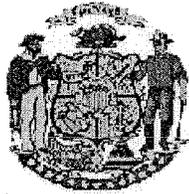
**Complaint Number:** CCI-2002-16865

**Nature of Complaint:** Complains that Sgt. Pulley sat about 3 feet away while he placed an attorney phone call; he wants unmonitored attorney calls.

**Method of Disposition:**  
Y Review on Record

**Recommendation:** Y Investigation

At present, CCI does not have the resources to accommodate attorney phone calls from any area of a housing unit, except the designated dayroom attorney phone. This issue was discussed with DOC Legal Counsel, and it was noted that if staff or other inmates were in the immediate area of the phone where an approved attorney call was in progress, that could be problematic. DOC 309.405, Wis. Adm. Code, governs inmate telephone calls to attorneys. Such calls are further governed by the general provisions of 309.39 (inmate telephone calls) where subsection 6 states, in relevant part: "A corrections officer or supervisor may not knowingly monitor or record a properly placed telephone call to an attorney." The word "monitor" is not defined in the administrative rule. However, the second college edition of Webster's Dictionary defines it in relevant part as: "to listen in on for the purpose of gathering information." Contact was also made with the CCI deputy warden who discussed this matter in detail with administrative and other CCI staff. Through investigation of this complaint it was discovered that, contrary to the ICE's report, the attorney phones in the unit dayrooms at CCI are in fact between 8 and 10 feet from the dayroom officer's desk. (not 3 feet as stated). The attorney phones in the dayroom are mounted on the wall and there are



Jon E. Litscher  
Secretary

## State of Wisconsin Department of Corrections

### CORRECTIONS COMPLAINT EXAMINER'S REPORT

"privacy wings" that measure about 12 inches deep that protrude from the wall on either side of the telephone. While this is not an ideal set up, I am advised that an inmate speaking on this phone in a normal tone of voice would not be audible to an officer sitting at the desk, assuming he is even at that location at the same time, rather than on a range or accomplishing any other array of responsibilities. I am further advised that CCI will make every effort to assure that there is minimal inmate movement in the dayroom area when attorney calls are in progress, but that it is not possible to halt all movement in or out of the building for the duration of such calls, noting that the operational needs of the institution do not cease when one inmate may be making a call. With this in mind, I will recommend this complaint be dismissed on appeal. I do not believe the current practice at CCI either enables or results in staff "monitoring" attorney calls, and it is apparent CCI administrators are both aware of, and have taken measures to assure, that any other inmate or staff presence in the area will be minimized to the greatest extent possible during such calls.

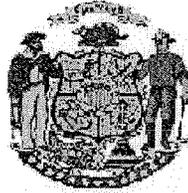
Decision Date: Friday, June 21, 2002

Print Date: Monday, July 01, 2002

A handwritten signature in black ink that reads "John Ray".

CORRECTIONS COMPLAINT EXAMINER

Scott McCallum  
Governor



OOS REPORT  
CCI-2002-16865

Jon E. Litscher  
Secretary

**State of Wisconsin**  
**Department of Corrections**  
**OFFICE OF THE SECRETARY'S REPORT**

---

**To:**

STARKWEATHER, JAY A # 185145  
UNIT: 06 - 20  
COLUMBIA CORRECTIONAL INSTITUTION  
PO BOX 950  
PORTAGE WI 53901-0950

Complaint File #: CCI-2002-16865

The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of 6/21/02 in the above case:  
The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.

---

Decision Date: Saturday, June 29, 2002

Reviewer's Signature:

This Copy Printed On: July 01, 2002

A handwritten signature in black ink, appearing to read "Cary O'Donnell".