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Details: Complaints.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

State ex rel. Myron E. Edwards, #258315

Green Bay Correctional Institution

2833 Riverside Drive

P.O. Box #19033

Green Bay, WI. 54307-9033

, Plaintiff

VS.

File No.:

SUMMONS

PETITION FOR DECLARATORY JUDGMENT

Case Classification Code No.: 30701

Wisconsin Department of Corrections;

Rick Raemisch, Secretary;

John Bett, DAI Administrator

3099 E. Washington Avenue

P.O. Box #7925

Madison, WI. 53707-7925

, Defendants

VS.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

Joint Committee For Review of Administrative Rules

Senator Grothman

Room 20 South

State Capitol

P.O. Box #7882

Madison, WI. 53707-7882

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

, Defendant(s).

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 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: Carlo Esqueda, Clerk of Circuit Court, 215 S. Hamilton St., Room #1000, Madison, WI. 53703-3285; and to Myron E. Edwards, Plaintiff, whose address is listed above in the caption. 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: July 5th, 2009.

Signed: 
Myron E. Edwards, Plaintiff

Myron E. Edwards, #258315
Green Bay Correctional Inst.
2833 Riverside Drive
P.O. Box #19033
Green Bay, WI. 54307-9033

State Ex Rel. Myron E. Edwards,
Plaintiff,

PETITION FOR
DECLARATORY JUDGMENT

VS.

Case No. _____

Wisconsin Department of Corrections;
Secretary Rick Raemisch; DAI Admini-
strator John Bett; and Joint Committ-
ee For Review of Administrative Rules,
Defendants.

Case Classification 30701

Preliminary Statement:

Plaintiff, Myron E. Edwards, a State prison convict, appears in this action pro se and sui-juris, pursuant to Wis. Stats. 227.40 and Wis. Stats. 806.04, hereby seeking Declaratory Judgments declaring that: 1. Wisconsin Department of Corrections (WDOC) exceeded its statutory authority for rule making; and illegally promulgated and enforced Wisconsin Administrative Code § DOC 309.51(2)(a) & (b); and 2. WDOC's Division of Adult Institutions (DAI) exceeded its statutory authority for rule-making; violated Wis. Stats. 301.328; and illegally promulgated & enforced Internal Management and Procedure (IMP) DOC 309IMP40.

Jurisdictional Statement:

This Circuit Court has proper jurisdiction over Myron E. Edwards's claims asserted within this petition pursuant to Wis. Stats. 227.40; 801.04(1), (2) & (3); 801.05(1), (2), (3) & (13); and 806.04(1). See also: Preiser v. Rodriguez, 411 U.S. 475, 489-492, 93 S.Ct. 1827 (1973): "...[S]ince these internal problems of State prisons involve issues so peculiarly within State authority and expertise, the State's have an important interest in not being by-passed in the correction of those problems. Moreover, because most potential litigation involving State prisoners arises on a day-to-day basis, it is most efficiently

and properly handled by the State Administrative bodies and State courts, which are, for the most part, familiar with the grievance of State prisoners and in a better physical and practical position to deal with these grievances". *Id.* 411 U.S. at 492.

Exhaustion of Administrative Remedies:

The United States Supreme Court in Jones v. Rock, 127 S.Ct. 910 (2007) held that failure to exhaust administrative remedies in a prisoner's action is an affirmative defense. Therefore, a prisoner no longer has the duty of pleading exhaustion of administrative remedies.

Notice of Claim:

On or about July 5, 2007, Myron E. Edwards filed a Notice of Claim with the Attorney General, pursuant to Wis. Stats. 893.82, raising all the issues subject of this action. A copy of the Notice of Claim is attached to this petition as "Attachment 'A'".

Service of the Summonses & Petition For Declaratory Judgment:

A copy of the summonses and petition for declaratory judgment has been served upon the Joint Committee For Review of Administrative Rules (JCRAR), as prescribed by Wis. Stats. 13.56(1); 227.40(5); and 806.04(11). See: Richards v. Young, 150 Wis.2d 549, 441 N.W.2d 742 (1989); & Harris v. Reivitz, 142 Wis.2d 82, 417 N.W.2d 50 (Ct.App. 1987).

Parties:

1. Myron E. Edwards, plaintiff, is a State prison convict in this action;

2. Wisconsin Department of Corrections (WDOC), defendant in this action, supervises the custody and discipline of all prisoners in order to protect the public and seeks to rehabilitate offenders and reintegrate them into society;

3. Rick Raemisch, defendant in this action, is the Secretary of the Wisconsin Department of Corrections (WDOC) and his office creates, implements, and enforces policies binding upon correctional officials and the prison inmate population. So too, is defendant Raemisch the final decision-maker for Offender Complaints filed through the Inmate Complaint Review System (ICRS);

4. John Bett, defendant in this action, is the Administrator for the Division of Adult Institutions (DAI). Mr. Bett creates, implements, and enforces policies binding upon correctional officials and the prison inmate population; and

5. Joint Committee For Review of Administrative Rules (JCRAR), is also a defendant in this action, if so approved by the Joint Committee On Legislative Organization pursuant to Wis. Stats. 227.40(5) and Wis. Stats. 806.04(11). JCRAR must review proposed rules when standing committees object to them. It also may suspend rules that have been promulgated; suspend or extend the effective period of all or part of emergency rules; and order an agency to put unwritten policies in rule form.

6. All defendants herein are being sued in their individual and official capacities.

STATEMENT OF FACTS

7. Myron E. Edwards has filed administrative complaints as perscribed by **Wisconsin Administrative Code § DOC 310**, concerning the issues herein complained about with WDOC's Inmate Complaint Review System (ICRS).

8. Particulary, Offender Complaint number WSPF-2007-16922 presented that, " I am constantly being charged .15¢ per page for legal services provided through photocopying of legal papers, despite the fact that the DOC does not have any statutory authority to make monetary assessments against prisoners for photocopy services of legal work. See: Smith v. Florida Department of Corrections, 920 So.2d 638 (Fla. 1st DCA 2005). ¶The DOC never followed by Wis. Stats. secs. 227.12 - 227.27 before promulgating a policy charging prisoners .15¢ per page, for legal services provided through photocopying of legal papers. Executive agencies must comply with procedural requirements imposed by statute(s). See: Gonzalez v. Reno, 212 F.3d 1338 (2000). ¶In conclusion, I seek to be repaid for all costs of legal copies I was charged for since 1997 up till the present; for the DOC to rescind the charges for photocopies of legal papers made while under the Legal Loans of WSPF 01032006 & WSPF 01022007; and any legal copies I shall make after the filing of this complaint."

9. Offender Complaint number WSPF-2007-17267 presents that, "My incoming monies are being deducted for legal loans at 50% due to DOC 309IMP40, at A.12. However, the Department of Corrections was never given authority by the legislature to make such deductions to inmate monies. It is already recognized that prisoners have a property interest in money received from outside sources or any source. See: Mahers v. Halford, 76 F.3d 951 (1996); Hampton v. Hobbs,

106 F.3d 1281 at 1287 (1997). Therefore, the DOC has to abide by Wis. Stats. secs. 227.12 - 227.27 before promulgating a policy calling for an automatic 50% deduction to inmate monies for institutional legal loans. Executive agencies must comply with the procedural requirements imposed by statute(s). See: González v. Reno, 212 F.3d 1338 (2000). ¶In conclusion, I want deductions to stop being made to my incoming monies for institutional legal loans for: WSPF 01032006 & 01022007, immediately, and any future deductions anticipated, in connection with legal loans also."

10. Offender Complaint number WSPF-2007-17641 presents that, " The DOC never followed by Wis. Stats. secs. 227.12 - 227.27 before promulgating a policy charging prisoners .2¢ per sheet of paper for legal work. Executive agencies must comply with procedural requirements imposed by statute(s). See: Gonzalez v. Reno, 212 F.3d 1338 (2000); and Smith v. Florida Department of Corrections, 920 So.2d 638 (FLA. 1st DCA 2005). ¶In conclusion, I seek to be repaid for all cost of paper I was charged for since 1997 up till the present; for the DOC to rescind the charges for paper I've received while under the legal loans of: WSPF 01032006 & WSPF 01022007; and any paper I shall receive after filing this complaint".

11. The United States Supreme Court in Bounds v. Smith, 430 U.S. 817, 821 (1977) established that an inmate has a constitutional right of meaningful access to the courts. To be sure, that right includes a right to services and supplies indispensable to filing court documents. The Bounds court specifically stated that the right to access to the courts includes providing indigent prisoners, at State expense,

with paper, postage, envelopes and adequate legal services. *Id.*

12. Subsequently, in or around October 1981 the Wisconsin Department of Corrections (WDOC) created **Wisconsin Administrative Code § DOC 309.51** Funds for legal correspondence and copying. The effective date was November 1, 1981. Then around December 1989, the WDOC revised and recreated, *inter alia*, (2) of **Wisconsin Administrative Code § DOC 309.51**, and its new effective date was January 1, 1990. Sub.(2) now read, and still does, " The costs to inmates of engaging in correspondence described in sub.(1) may not exceed the following: (a)Fifteen cents per page of photocopy; and (b)Two cents per sheet of paper".

13. Approximately around September 1, 1992, WDOC DAI Administrator created and enacted an Internal Management Procedure dealing with monetary deductions applied to inmates' accounts. This procedure was numbered and titled as **DOC 309IMP40** Inmate Trust System Deductions. **DOC 309IMP40** Inmate Trust System Deductions was revised again and became effective on or about March 17, 2004. Under sub.12 of **DOC 309IMP40**, Inmate Trust System Deductions, it states at paragraph "A", in relevant part, that the DAI Administrator's responsibilities are to: " Establish consistent, systematic deduction schedule for all inmates monies received in all adult institutions. These deductions will be taken on a declining balance unless otherwise noted and be set in WITS. They must be taken by all adult institutions in the following order: ... 12) Institution Legal Loans- FIFO 50%". On or about August 1, 2008, **DOC 309IMP40**, Inmate Trust System Deductions, became **DAI Policy # 309.45.02**, and still has the same criteria as before.

14. Myron E. Edwards (Edwards) was sentenced to WDOC on June 6, 1996.

15. On the following dates Edwards received a legal loan from WDOC to cover the costs of photocopying, paper, and etc. -- all in accordance with Wis. Adm. Code §DOC 309.51(1),(2)(a) & (b); and ended for the respective year(s):

- (A) November 5, 1997: .43¢;
- (B) April 10, 1998: \$11.57;
- (C) March 29, 1999: .60¢ & \$2.16;
- (D) May 19, 2000: \$29.27 & \$11.68;
- (E) July 29, 2002: \$1.64;
- (F) January 28, 2003: \$13.74;
- (G) June 14, 2005: \$10.61 & \$3.58;
- (H) January 3, 2006: \$56.93;
- (I) January 2, 2007: \$191.17;
- (J) January 14, 2008: \$205.96, and still raising.

16. For each of these legal loans, Edwards had to sign a "Loan Repayment Agreement" (DOC-1290 form) before he could receive any paper, photocopies, etc., for legal purposes. This "Loan Repayment Agreement" was written stating: " I have received a copy of DOC 309 Internal Management Procedure 29 (309IMP29), Legal Loans.

. I understand that my legal loan balance may not exceed \$200 per year and that this amount must cover all my litigation expenses for the year, except as provided in DOC 309 IMP 29.

. I understand any charges to my account under this procedure are loans.

. I understand this document and hereby agree to all of its terms.

. I also agree to repay any and all outstanding loans provided me under this policy.

. I understand that upon my release I remain obligated to repay this loan in full. No coercion, threat or duress was used to induce me to enter into or sign this agreement".

17. Edwards signed each "Loan Repayment Agreement" that he was presented with, because if not, he could not litigate his pending direct appeal in his criminal case.

18. Edwards repaid the legal loans (A) - (G), listed at par. 15 of this petition, in full. However, 50% of all his incoming monies was garnished by the WDOC in order to do so. Legal Loans (H) - (J), listed at par. 15 of this petition, Edwards still must repay, at 50% deductions of his incoming monies,

19. WDOC has promulgated **Wis. Adm. Code § DOC 309.51(1), (2)(a) & (b)** illegally; and exceeded its statutory authority for rule-making consistent with **Wis. Stats. 227.11(2)(a)**, to the extent to which the chapter confers rule-making authority. Rule-making authority is expressly conferred as follows: " (2)(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds

the bounds of correct interpretation".

20. In promulgating **Wis. Adm. Code § DOC 309.51(1),(2)(a) & (b)**, WDOC claims to have rule-making authority conferred by Wis. Stats. secs. 227.11(2); 301.02; and 301.03.

21. WDOC also claims that **Wis. Adm. Code § DOC 309.51(1),(2)(a) & (b)** is interpreting Wis. Stats. 46.07; 301.32; 302.07; 302.08; 302.12; 303.01; and 303.065. See: **Wis. Adm. Code § DOC 309.01 (Applicability).** However, none of these statutes WDOC claims to be interpreting, does not mention anything about indigent prisoners and/or legal supplies provided to indigent prisoners...expressed; nor implied.

22. Neither does any Wis. Stats. give the DAI Administrator rule-making authority expressed and/or implied, to make automatic deductions for legal loans to indigent prisoners.

23. Edwards was hindered access to the courts on numerous occasions because of the WDOC's & DAI Administrator's illegal promulgation and enforcement of **Wis. Adm. Code § DOC 309.51(2)(a) & (b); and DOC 309IMP40, par. A, at sub. 12.** On January 7, 2008, Edwards was denied photocopies of his Small Claims complaint & Summonses needed to start a Small Claims action against the WDOC's staff at Wisconsin Secure Program Facility (WSPF), because he did not sign a "Legal Loan Repayment Agreement" for 2008, pursuant to the WDOC's **DAI Policy and Procedure #309.51.01--** for the purposes of **DOC 309IMP40, par. A, at sub.12** (currently known as **DAI Policy #309.45.02**).

24. Edwards then filed an Offender Complaint regarding this specific

denial of access to the courts, on January 9, 2008. This complaint was numbered as WSPF-2008-1208; and met with negative results.

25. However the day before, January 8, 2008, Edwards was denied 5 brown envelopes and 10 white envelopes-- which were needed to start his Small Claims action against the WDOC's staff at WSPF, also because he did not sign a "Legal Loan Repayment Agreement" for 2008, pursuant to the WDOC's **DAI Policy and Procedure** #309.51.01-- for the purposes of **DOC309IMP40**, par. A, at sub.12 (currently known as **DAI Policy** #309.45.02).

26. Edwards had also filed an Offender Complaint regarding this specific denial of access to the courts, on January 9, 2008. This complaint was numbered as WSPF-2008-1205; and met with negative results.

27. Then on August 3, 2008, Edwards sought to make 6 photocopies of his 34 page Brief for his civil case in Edwards v. Casperson, et al., appeal number 2008-AP-1558, but was denied these photocopies also since they would be .15¢ per page; thereby totaling \$30.60 and exceeding the legal loan limit of \$200 provided by WDOC-- since Edwards's \$200 legal loan limit had previously been reached.

28. Edwards then filed an Offender Complaint regarding this specific denial of access to the courts, on August 4, 2008; Edwards's complaint was numbered as WSPF-2008-21209; and met with negative results.

29. Then on November 2, 2008, Edwards sought to make 6 photocopies of his 14 page Reply Brief for his criminal appeal in State v. Edwards,

Appeal No. 2008-AP-1186, but was denied these photocopies since they would be .15¢ per page, pursuant to Wis. Adm. Code § DOC 309.51(2)(a), thereby totaling \$12.60 and exceeding the legal loan limit of \$200, provided by WDOC.

30. On November 4, 2008, Edwards filed an Offender Complaint regarding this specific denial of access to the courts; this complaint was numbered as WSPF-2008-28647, and was met with negative results.

31. Wis. Stats. 301.328 Judgment for litigation loans to prisoners, reads:

"(1) In this section, "litigation loan" means a loan made to a prisoner by the department to pay for paper, photocopying, postage or other expenses associated with litigation commenced by the prisoner.

(2) If a prisoner fails to repay a litigation loan to the department, the warden of the institution where the prisoner is incarcerated, imprisoned, confined or detained may submit a certification under oath to the clerk of the circuit court in the county where the institution is located. The certification shall state the amount of litigation loans unpaid, the name and location of the prisoner and such other information as the court considers necessary. The court shall order that the amount certified by the warden be a judgment on behalf of the state and against the prisoner if the prisoner fails to submit a written objection to the court within 20 days after the court receives the certification from the warden. If the prisoner timely submits a written objection to the certification, the court shall consider the objection to be a complaint in a civil action and proceed under the rules of procedure under ch. 799, without requiring the service of a summons or the payment of filing fees.

(3) At the same time that the warden submits the certification to the

court, the warden shall provide the prisoner with a copy of the certification. The warden shall attach to the certification provided to the prisoner a notice informing the prisoner of all of the following:

(a) That if the prisoner fails to submit a written objection to the court within 20 days after the court receives the certification from the warden, the court shall order that the amount certified by the warden be a judgment on behalf of the state and against the prisoner.

(b) The name and address of the circuit court where the certification was submitted.

(c) That if the prisoner timely objects to the certification, the objection will be considered a complaint for purposes of the commencement of a civil suit under ch. 799.

(d) That the prisoner is required to submit a copy of the objection to the warden at the time he or she submits the objection to the clerk of circuit court."

32. DOC 309IMP40 at sub.12 (currently **DAI Policy** #309.45.02 at sub.14) violates Wis. Stats. 301.328(2) - (3)(d), because it circumvents the due process of Wis. Stats. 301.328(2) - (3)(d) by automatically deducting an inmates monies at 50% to pay towards legal loans incurred by an inmate ...thereby not giving an inmate the chance to refuse to pay the legal loan and/or object to the legal loan itself; and in order for an objection to be considered a complaint for the purposes of the commencement of a civil suit under ch. 799.

33. As such, Edwards has standing to challenge **Wis. Adm. Code** § DOC 309.51(2)(a) & (b) and DOC 309IMP40, sub. 12 (currently **DAI Polict** #309.45 .02, sub. 14), because each rule interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of Edwards- as articulated in pars. 7-32 herein. See: State ex rel. Lewis v. Bablitch,

REQUESTED RELIEF:

34. Wherefore Plaintiff, Myron E. Edwards, prays that this court grants the following relief:

A) Issue a Declaratory Judgment stating that: 1) WDOC illegally promulgated Wis. Adm. Code § DOC 309.51(2)(a) & (b) by failing to comply with Wis. Stats. 227.10 - 227.27 before promulgating a policy that charges indigent prisoner litigants for photocopies and paper; 2) WDOC exceeded its statutory grant for rule-making authority when it created a rule under Wis. Adm. Code § DOC 309.51(2)(a) & (b) determining the price for photocopying for indigent prisoner litigants to be .15¢ per page, and determining the price for paper for indigent prisoner litigants to be .2¢ per sheet; 3) Wis. Adm. Code § DOC 309.51(2)(a) & (b) violates the ruling held in Bounds v. Smith, 430 U.S. 817, 821 (1977)- that indigent prisoners are to be provided with paper and adequate legal services at State expense; 4) DOC 309IMP40 at sub. 12 (currently DAI Policy #309.45.02 at sub. 14) constitutes a "rule" pursuant Wis. Stats. 227.01(13)(a), affecting Edwards's (inmates) rights to due process under Wis. Stats. 301.328(2)-(3)(d); 5) DOC 309IMP40 at sub. 12 (currently DAI Policy #309.45.02 at sub. 14) was illegally promulgated by the WDOC's DAI Administrator, because Wis. Stats. 227.10 - 227.27 was not complied with before promulgating a policy that called for automatic deductions to inmates incoming monies at 50% for legal loans provided by the WDOC; 6) WDOC DAI Administrator exceeded statutory grant for rule-making authority when creating a rule under DOC 309IMP40 at sub. 12 (currently DAI Policy #309.45.02 at sub. 14) calling for automatic deductions to indigent prisoner litigators incoming monies at 50% to pay towards legal loans provided by the WDOC; and 7) DOC 309IMP40 at sub. 12 (currently DAI Policy #309.45.

02 at sub. 14) violates Wis. Stats. 301.328(2) - (3)(d) by not allowing Edwards (indigent prison litigators) to refuse to repay litigation loans; and undergo the due process established under Wis. Stats. 301.328(2) (3)(d).

B) Trial by jury of six or more persons.

C) An injunction that prohibits:

1) Any and all further use of Wis. Adm. Code § DOC 309.51(2)(a) & (b) and DOC 309IMP40 (currently DAI Policy #309.45.02 at sub. 14) at sub. 12, until such provisions have been promulgated under Wis. Stats. ch. 227-Rule-Making procedures; and

2) Any and all collection of Edwards's monies and incoming monies, for any and all outstanding legal loans still owed.

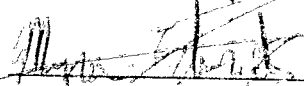
D) Compensatory damages in the amount of \$85.28 to be paid by Defendant WDOC.

E) Punitive damages in the amount of \$4,500.00 to be paid jointly by Defendants WDOC, Rick Raemisch, and John Bett.

F) All costs and disbursements for having brought the instant litigation, and any and all further relief that this court deems appropriate under the circumstances herein articulated.

DATED: July 2nd, 2009.

Respectfully Submitted:


Plaintiff, pro se

Myron E. Edwards

SERVED ~~PERSONAL~~ SUBSTITUTE

AT 9:10 M THIS 26 DAY OF Oct 2009
AT THE _____ CITY _____ OF _____ MADISON

DAVID J. MAHONEY

BY _____ Deputy Sheriff