

CR 87-65

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CERTIFICATE

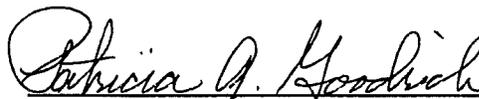
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to loans for inmates of adult correctional institutions to pay expenses in connection with their legal correspondence were duly approved and adopted by this Department on November 17, 1989.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 17th day of November, 1989.

SEAL:



Patricia A. Goodrich, Secretary
Department of Health and Social Services

1-1-90

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING, REPEALING AND RECREATING RULES

To amend HSS 309.51(1) and 309.51 Note and to repeal and recreate HSS 309.51(2), relating to loans for inmates of adult correctional institutions to pay for photocopying, postage and supplies related to their legal correspondence.

Analysis Prepared By the Department of Health and Social Services

An inmate of an adult correctional institution who corresponds with a court, an attorney, a party in litigation or the Corrections Complaint Examiner in the Department of Justice has expenses in connection with this correspondence, particularly for photocopies and postage. The Department's rules currently state that if an inmate is unable to pay for what it costs to engage in this legal correspondence, the Department will give the inmate a loan or a subsidy to cover or help with expenses. However, the rules do not include a dollar limit on loans, and in a few cases inmates have run up big debts which the institutions eventually are forced to absorb in whole or in part within their budgets. The Department wants to set some limits on these costs and at the same time promote inmate rehabilitation by having the inmate take responsibility for costs associated with those activities.

This order revises s. HSS 309.51 to state that the Department will issue a loan but not a subsidy to pay the costs of legal correspondence. The annual limit on the amount loaned to an inmate for this purpose is set at \$200. This appears reasonable based on information from federal and state clerks of court regarding the average length of inmate-filed suits. Assuming 2 respondents, the Department has calculated that a \$200 loan limit would allow an inmate to pay for photocopies and postage to file any of the following in one year's time: 19 direct state court appeals when the 15 copy requirement is waived; 37 supervisory writs in the state court of appeals; 22 appeals to the Wisconsin Supreme Court from adverse holdings on supervisory writs to the court of appeals; 55 to 139 federal conditions of confinement suits, depending on the district where filed; or 98 to 179 responses to summary judgment motions. Most inmates involved in more than one legal action file a combination of several different types of lawsuits. While the loan limit does not prevent inmates from filing lawsuits, inmates with unusually numerous issues to pursue will have to prioritize their concerns and may have to delay filing in some cases.

The Department's authority to promulgate these rules is found in ss.46.03(1) and (6) and 227.11(2)(a), Stats. The rules interpret s.46.03(1) and (6), Stats.

SECTION 1. HSS 309.51(1) is amended to read:

HSS 309.51(1) ~~Legal correspondence~~ Correspondence to courts, attorneys, parties in litigation, the inmate complaint review system under ch. HSS 310 or the parole board may not be denied due to lack of funds, except as limited in ~~sub.(2)~~ this subsection. Inmates without sufficient funds in their general account to pay for paper, photocopy work, or postage may receive a loan from the institution where they reside. No inmate may receive more than \$200 annually under this subsection, except that any amount of the debt the inmate repays during the year may be advanced to the inmate again without counting against the \$200 loan limit. The \$200 loan limit may be exceeded with the superintendent's approval if the inmate demonstrates an extraordinary need, such as a court order requiring submission of specified documents. Any The institution shall charge any amount advanced shall be charged under this subsection to the inmate's general account for future repayment. An inmate may be permitted to retain in the inmate's general account an amount of money specified, in writing, by the bureau of adult institutions that is not subject to repayment of the loan.

SECTION 2. HSS 309.51(2) is repealed and recreated to read:

HSS 309.51(2) 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.

SECTION 3. HSS 309.51 Note is amended to read:

Note: HSS 309.51. This section authorizes loans ~~and subsidies~~ to inmates for expenses related to legal correspondence. The funds are not intended for actual legal services but ~~for expenses to pay~~ for postage, paper ~~or~~ and photocopying.

~~This section is necessary so no inmate is denied access to the legal process due to lack of funds.~~ The department recognizes that inmates have a right of access to the legal system regardless of financial status. For a discussion of the importance of the legal process to people in correctional institutions, see HSS 309.25 and note. However, the right of access to the courts is not unconditional. Rather, inmates have the right of meaningful access to the courts. Campbell v. Miller, 787 F.2d 217 (7th Cir. 1986). Therefore, inmates do not have a right to an unlimited number of free photocopies, even for legal purposes. Harrell v. Keohane, 621 F.2d 1059, 1061 (10th Cir. 1980) (per curiam); Kendrick v. Bland, 585 F. Supp. 1536, 1553 (W.D.Ky. 1984). See also, Gibson v. McEvers, 631 F.2d 95, 98 (7th Cir. 1980) and Gaines v. Lane, 790 F.2d 1299 (7th Cir. 1986).

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s.227.22(2), Stats.

Wisconsin Department of Health and
Social Services

By: Patricia A. Goodrich

Patricia A. Goodrich
Secretary

Dated: November 17, 1989

SEAL:

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State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

November 17, 1989

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NOV 17 1989

Revisor of Statutes
Bureau

Mr. Orlan Prestegard
Revisor of Statutes
7th Floor - 30 on the Square
Madison, WI 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 309.51, administrative rules relating to loans for inmates of adult correctional institutions to pay expenses in connection with their legal correspondence.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rules apply to the Department and to inmates of adult correctional institutions. The rules do not affect small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich
Secretary

Enclosure