

No. 40939-9-II

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

STATE OF WASHINGTON  
DEPUTY 

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JEFFREY R. MCKEE,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

A Washington State Agency,

Respondent.

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APPEAL FROM THURSTON COUNTY SUPERIOR COURT

The Honorable Paula Casey

Cause No. 08-2-00386-5

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**APPELLANTS OPENING BRIEF**

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Jeffrey R. McKee 882819  
*Petitioner, Pro-se*  
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## TABLE OF CONTENTS

I.	INTRODUCTION. ....	1
II.	ASSIGNMENTS OF ERROR. ....	14
III.	ISSUES PRESENTED. ....	15
IV.	ARGUMENT. ....	15
	A. THE TRIAL COURT LACKS THE INHERENT AUTHORITY TO INVOLUNTARILY DISMISS MR. MCKEE'S LAWSUIT WHERE SUCH DISMISSAL IS ABSENT ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW. ....	15
	B. THE TRIAL COURT'S INVOLUNTARY DISMISSAL OF MR. MCKEE'S CIVIL ACTION IS NOT PERMISSIBLE UNDER CR 41(b)(1) BECAUSE MR. MCKEE'S LAWSUIT WAS PREVIOUSLY NOTED FOR TRIAL. ....	19
	C. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DISMISSED MCKEE'S CIVIL ACTION WITHOUT FIRST CONSIDERING ANY ALTERNATIVE SANCTIONS LESS SEVERE THAN DISMISSAL. ....	22
	D. MR. MCKEE IS ENTITLED TO ATTORNEY FEES AND COSTS IF HE PREVAILS ON APPEAL. ....	27
	1. <u>The Prevailing Party Against A Governmental Entity Is Entitled To Reasonable Attorney Fees And Costs In Accordance With RAP 18.1, And The PRA.</u> .....	27
V.	CONCLUSION. ....	28

## TABLE OF CASES

### STATE CASES

<i>In re of Addleman</i> , 138 Wn. 2d 751, 991 P.2d 1123 (2000).....	16, 17, 18
<i>Foss Mar. Co. v. City of Seattle</i> , 107 Wn. App. 669, 675, 27 P.3d 1228 (2001).....	21
<i>Maritime Co. v. City of Seattle</i> , 107 Wn. App. 669, 27 P.3d 1228 (2001).....	20
<i>Progressive Animal Welfare Soc’y v. Univ. of Wash.</i> , 114 Wn. 2d 677, 790 P.2d 604 (1990).....	27, 28
<i>Richard v. Thompson</i> , 130 Wn. 2d 368, 922 P.2d 1343 (1996).....	18
<i>Rivers v. Washington State Conference of Mason Contractors</i> , 145 Wn. 2d 674, 41 P.3d 1175 (2002).....	23, 26
<i>Services of America II, Inc. v. WaferTech, LLC.</i> , 159 Wn. App. 591, 245 P.3d 257 (2011).....	22
<i>Snohomish County v. Thorp Meats</i> , 110 Wn. 2d 163, 750 P. 2d 1251 (1988).....	20, 21
<i>Wallace v. Evans</i> , 131 Wn. 2d 572, 934 P.2d 662 (1997).....	20
<i>Yellam v. Woerner</i> , 77 Wn. 2d 604, 464 P.2d 947 (1970).....	21

### FEDERAL CASES

<i>California Motor Transp. Co. v. Trucking Unlimited</i> , 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972).....	16
<i>Crawford-El v. Burton</i> , 523 U.S. 574, 118 S. Ct. 1584, 1596, 140 L. Ed. 2d 759 (1998).....	17
<i>Farr V. Blodgett</i> , 810 F. Supp. 1485 (1993).....	17

FEDERAL CASES cont.

*Thaddeus-X v. Blatter*, 175 F.3d 378 (6<sup>th</sup> Cir. 1999).....18

CONSTITUTION

U.S. Const. Amendment 1.....16, 17, 18

STATUTES AND RULES

RCW 42.56.550(3).....23

RCW 42.56.550(4).....27

RCW 4.84.080(2).....28

CR 26(i).....24

CR 41(b) (1).....15, 20, 21, 22

RAP 18.1.....27

## I. INTRODUCTION

Appellant, Jeffrey R. McKee is a Washington State prisoner who has been in the custody of the Washington State Department of Corrections (Department) since July of 2005. On about April 1, 2006, Mr. McKee was transferred from Washington State to the Corrections Corporation of America (CCA) Eloy Detention Center. On July 18, 2006, Mr. McKee was again transferred to the CCA Florence Corrections Center. CCA is a private prison corporation that was under contract with the Department to house its prisoners due to the then prison overcrowding. Part of this contract between the Department and CCA identified that ownership of all material, information, data, documentation, studies and evaluations produced in the performance of the contract is the property of the Department and CCA. CP 256, Appendix (App) A, Section 9.14.

Mr. McKee was in direct appeals for the time he was at CCA. When Mr. McKee arrived at CCA he noticed there was a lack of any legal law library or access to minimal legal research to perfect his appeal. Because of this Mr. McKee filed prison grievances to gain some legal access. In response to these grievances, the on-site Department employee and CCA employees waged a retaliation

campaign against Mr. McKee. This campaign consisted of harassment of Mr. McKee's family, threats and several minor and major prison infractions. CP. 149 – 150

On December 4, 2006, Mr. McKee was placed in the segregation unit of CCA and a major prison infraction was issued for a violation of Washington Administrative Code (WAC) 137-25-030 (652) "engaging inciting a group demonstration" given infraction number 8010-06W. CP. 174, App. B. Mr. McKee had a hearing on this infraction on December 26, 2006, and was subsequently found guilty. Id. At the hearing, Mr. McKee provided the hearings officer a written hearings memorandum and a letter requesting all records related to the infraction including the tape recorded hearing Public Disclosure. CP. 151, ¶12, then CP 163, App. E.

On December 7, 2006, Mr. McKee submitted a public records request to the Department's Public Records Coordinator, Lyn Francis requesting all writings and related documents for infraction number 8010-06W, and other infraction records. CP. 159, App. C. On December 21, 2006, Ms. Francis responded to

this request and estimated ten business days to respond. CP 161, App. D.

On February 13, 2007, Rose Marquis, Administrative Assistant to the Department responded that the Department had gathered 41 pages of records and one Compact Disk had been gathered. CP. 169, App. F. Mr. McKee sent Ms. Marquis a letter dated March 7, 2007, informing her that Mr. McKee would be sending a check for the records and notified her that Mr. McKee had submitted a public records request directly to the hearings officer for records related to the infraction including the tape recorded hearing and that he had not received any response to this request. Mr. McKee further notified Ms. Marquis that there should be tape recording of the hearing as a responsive record. CP. 171, App. G. Thereafter, Mr. McKee received the records from the Department which only contained two (2) documents and no tape recording of the hearing. Mr. McKee then sent a letter to Ms. Marquis, dated May 1, 2007, notifying her that there should have been several documents related to the infraction including a tape recording of the hearing. CP. 176, App. H.

On May 3, 2007, Ms. Marquis, responded to this letter stating "I had previously checked with Mr. Lucas at Florence Corrections Center regarding this infraction. His response was that there is nothing to provide or produce as you were found not guilty. He states that they don't keep the materials after the finding of not guilty." CP. 178, App. I. Mr. McKee new the Department was silently withholding records because he was infact found guilty of the infraction and the State records retention schedule for prison infractions at that time was two (2) years.

On December 1, 2007, Mr. McKee again notified Ms. Marquis that he had handed the hearings officer Timothy Dobson a written public records request for the hearing records and tape recorded hearing and that he had not received any response to this request. CP. 180, App. J. Ms. Marquis responded to this by issuing a new Department tracking number and asking for twenty (20) additional business days to respond. CP 182, APPK

Mr. McKee filed this suit alleging the Department violated RCW 42.56.et.seq, the Public Records Act by silently withholding the infraction records. On June 3, 2008, Trina Wendel, Judicial Assistant to Thurston County Superior Court Judge Chris Wickham,

sent Mr. McKee and the Department's Counsel of record Assistant Attorney General Jason Howell, a Case Schedule Order in this case. CP. 361-65, App. L. Mr. McKee submitted a letter to Ms. Wendel and Mr. Howell objecting to the dates provided in the scheduling order. Ms. Wendel responded by letter dated August 22, 2008, indicating she found no conflict with the case schedule. CP. 367, App. M. Mr. McKee replied to this, apologizing for any confusion and requested information on the current schedule. A copy of this letter was sent to Mr. Howell. CP. 369, App. N. Mr. McKee had no further response from the courts on this issue.

Mr. McKee conducted discovery in this case. He submitted several sets of interrogatories and requests for production to defendants to develop his case. On November 14, 2008, Mr. Howell sent a boiler plate objection to Mr. McKee's Fifth Set of Interrogatories and Request for Production. CP. 505-16. Mr. Howell also sent Mr. McKee a letter indicating that the Department needed more time to complete the responses. CP. 317, App. O. and anticipated a response by December 1, 2008. The department did not move for a protective order under CR 26(c). Mr. McKee sent Mr. Howell a letter dated December 11, 2008, stating that Mr. McKee had not received the discovery responses in this case and

Requested a CR 26(i) conference call. On December 14, 2008, Mr. Howell sent Mr. McKee another letter stating that all the responsive records to the Fifth set of Interrogatories had not been completed and requested a further continuance. CP. 372, App. P. On December 19, 2009, Mr. McKee again requested Mr. Howell schedule a CR 26(i) conference call to resolve the discovery issues. On January 12, 2009, Mr. Howell responded refusing to schedule a conference call to resolve the discovery issues. On January 12, 2009, Mr. Howell responded refusing to schedule a conference call until all the discovery was responded to. CP. 373, App. Q. On February 2, 2009, Mr. Howell sent Mr. McKee a fourth letter stating that he was not ready to provide the responses to discovery and anticipated obtaining them by the middle of February. CP. 375, App. R. The Department sent their second supplemental responses to Mr. McKee sometime after March 10, 2009. CP. 16.

On April 21, 2009, while Mr. McKee was at the Stafford Creek Corrections Center (SCCC), Corrections Unit Supervisor (CUS) Dennis Cherry placed Mr. McKee in the segregation unit and had him transferred to the Airway Heights Corrections Center (AHCC) on May 8, 2009, because Mr. McKee had filed a prison

grievance to obtain legal copies. CP. 377, App. S, then CP. 387, App. S. When Mr. McKee was transferred, the Department packed and shipped one pair of shoes and two hearing CD.'s. CP. 495-96, App. T. (Declaration of Risa Klemme). At the time Mr. McKee was transferred the Departments Transportation Of Offender Property policy mandated:

“The offender personal property items will be transported at Department expense in no more than 2 shipping boxes that de not exceed 25 pounds per box and are 10”X12”X18””

WDOC Policy 440.020. I.B

“The following items must be shipped as part of the 2 box limit” a. Legal documents/papers needed to meet a court imposed deadline if these documents/papers exceed the 2 box limit, the Superintendent/Community Corrections Supervisor may authorize Department transportation of additional boxes.”

WDOC Policy 440.020 I. B. (1)(a). CP. 484. App. T

Mr. McKee sent two letters to Pat Glebe SCCC

Superintendent notifying him of Mr. McKee’s court deadlines and requested he ship Mr. McKee’s legal files on the next available transport bus. Mr. Glebe responded to one of the two letters dated September 9, 2009, stating:

“Upon reviewing your situation this letter will be forwarded to SCCC Property Room with instructions

to ship your property to you via the Offender  
Transport bus...”

CP. 480, App. T.

But, on September 17, 2009, Mr. Glebe sent a follow-up letter  
stating:

“This letter is a follow-up to the correspondence my  
office sent you on September 9, 2009. That letter is  
in error and is against Department of Correction’s  
policy regarding shipping offender property.

I have been advised that this issue is in litigation and  
will be resolved by the courts. Because of this status,  
SCCC has been notified to hold the property until we  
have received outcome of the litigation.”

CP. 482, App. T.

On February 1, 2010, Abram Clark, SCCC Property Sergeant  
gathered and sent two boxes of legal property, pursuant to a court  
order in McKee v. Madison, Thurston County Superior No. 08-2-  
00338-5. CP. 478, App. T. On January 11, 2010, Mr. McKee sent  
Mr. Glebe a letter detailing the problems Mr. McKee was having  
with acquiring his property and asked Mr. Glebe to answer some  
specific questions. CP. 486, App. T. Mr. Glebe responded to this  
letter on February 1, 2010, stating that the Attorney General’s  
Office had directed them to hold all of Mr. McKee’s property. CP.  
490, App. T. With this new information Mr. McKee filed a motion to

ship Mr. McKee's remaining property and sanctions against the Attorney General's Officer for violations of the rules of Professional Conduct. In response to this motion McKee received a letter from Mr. Glebe dated March 26, 2010, stating that all of Mr. McKee's property would be shipped on the next Offender Transport vehicle. CP. 501, App. T. This mooted Mr. McKee's motion. Mr. McKee received what was left of his property several weeks after March 29, 2010. On April 30, 2010, Mr. McKee had a telephonic hearing on his motion to stay proceedings, pending resolution of his motions to obtain his legal property. Because Mr. McKee had just received his property he requested the court convert his motion into one of continuance. CP. 321-24, App. U.

At this hearing the following was discussed:

THE COURT: "Okay. I am going to let Ms. Olsen speak."

Ms. OLSEN: "Very briefly, Your Honor. Mr. McKee's basis for a motion for his stay was so that he could have access to his legal materials. He has now had access to every single box of his legal materials for 15 days. He is given the opportunity to exchange materials as he sees fit and have the materials in his cell as he sees fit."

In light of that being the only basis for his motion for stay, I would ask that the Court deny the motion and order that any show cause motion or

whatever he intends to file to resolve this lawsuit be filed immediately upon a date set by the court.”

THE COURT: “Now, do we have some kind of a case schedule order in this matter?”

MS. OLSEN: “Yes. I believe that the trial is set for – I’m sorry, I don’t know the date off the top of my head, but I believe it’s two weeks from today. I certainly understand that potentially briefing could not be done by that date, but at any point – at any rate I would like to have this case set and resolved fairly quickly. It’s been pending for, oh, almost two and a half years, so we’re at the point now where this case should be resolved.

If Mr. McKee has outstanding discovery issues, there’s certainly a manner for him to resolve those discovery issues; he has not done so. There has been no contact with Mr. McKee requesting any kind of discovery conference with me at all regarding this case. He is in possession of his materials. That was the only basis for his motion. I ask that his motion be denied and this case be reset.

If you give me just a moment I could check to verify what date we are set for trial.”

THE COURT: I think I noticed in the materials it is – is it May 10<sup>th</sup>, Mr. McKee?”

MS OLSEN: “May 14<sup>th</sup> actually.”

THE COURT: “ May 14<sup>th</sup>. So I guess it is assumed that it will be decided on briefing rather than with testimony since May 14<sup>th</sup> is a day in which we don’t take testimony.”

MS OLSEN: “Customarily, yes, these public records cases are handled that way, yes.”

THE COURT: "So there has not been any motion to compel discovery in front of me. I don't know if there was one earlier filed, Mr. McKee."

MR. MCKEE: "Your Honor, previously under the Court Rule 26(i) there was a mandatory conference call, and that was upheld in *Case v. Dundom*, 115 Wn.App. at 199, so I could not at the time bring any motions for discovery because, being a prisoner, I can't call the defendant's counsel. I have to have them make the call. If you look at the letters from counsel, they kept on resisting the conference call."

Now, there's a new case that just came out, *Amy v. K-Mart of Washington*, which is 153 Wn.App, which now gives the Court discretion to hear a motion, so now maybe I don't need to make a required conference call and I can just bring in the motion now without that to compel the discovery."

THE COURT: "Well, the date for fully resolving this is scheduled for May 14, so what is the problem here?"

MR. MCKEE: "The problem is I haven't resolved discovery issues. There was never a discovery deadline entered in this –"

THE COURT: "In public records requests we usually don't enter discovery deadlines because there is usually not discovery to be done."

MR. MCKEE: "Okay. There's another case that just briefly discussed that, that some discovery can be had when needed. In a case like this where the defendant is saying they don't have the records and I'm saying they do have the records, there is, I believe, some need for discovery."

THE COURT: "so here is the situation: This case has been pending for a long time. It is a 2008 case. If you should prevail you are entitled to

penalties, so I am not inclined to grant any continuance in this matter because the penalties would continue to run. I guess there is going to be no stay.”

MR. MCKEE: “Okay. Yeah, and I was actually going to – since I finally did get the files, I was going to just ask the Court to convert the motion at their discretion as a continuance motion. I guess I have the question of do I need to make a Court Rule 26 (i) conference with counsel before I can file a motion for discovery or can I just go ahead and do that now?”

THE COURT: “ well, I am going to go ahead and let you file a motion for discovery without the 26(i) conference because of the difficulty of using the telephone.”

MR. MCKEE: “Okay. Thank you, Your Honor. So do we have a ---“

THE COURT: “But if the Attorney General calls you back in response to your motion, you must have the conference based upon her call to you. I am not going to require her to call you right now, but if you file your motion and she is prepared to do the 26(i) conference, then she will call you.”

MR. MCKEE: “Okay. So I file the motion with the Court and then if she---“

THE COURT: “But the problem is, Mr. McKee, the 14<sup>th</sup> is two weeks from today.”

MR. MCKEE: “Yea, yeah. Well, that’s not gonna work, so I guess I just need to leave it to the discretion of the Court on how to resolve this.”

THE COURT: “Well, I have not granted the continuance and I have not granted the stay, so I am assuming we are to address the merits on May 14<sup>th</sup>.”

MR. MCKEE: “Okay. So May 14<sup>th</sup> I need to file a summary judgment motion.”

THE COURT: "well, summary judgment motions generally take 28 days, and we are certainly beyond that. I don't know what we are going to do."

MR. MCKEE: "Okay. So—"

THE COURT: "So in order to have more time, did you – I don't even know if th Court can inquire, but did you want to waive your right to penalties for the duration of your continuance?"

MR. MCKEE: "No, for the simple fact that the majority of the reason why this case has dragged on for so long was because of the defendants prolonging it."

THE COURT: "Okay. So I am going to suggest that you need to have something filed be next Friday if we are going to have a hearing on the 14<sup>th</sup>."

MR. MCKEE: Okay. Whether it's a discovery motion or –"

THE COURT: "Well, I don't know if a discovery motion would do at that point. I think you need to address the merits."

MR. MCKEE: "Okay. All right, Your Honor. Well, then I guess I'd like to object to it because I think it prejudices me, but I will definitely work this weekend to put in some sort of motion for the Court...."

CP. 319-331, App. U.

On May 7<sup>th</sup>, 2010, Mr. McKee submitted a CR 56 Motion for summary judgment. CP. 128-29, App. V. and two motions to compel discovery.

Since Mr. McKee is a prisoner he filed the summary judgment and discovery motions on May 7, 2010, using General Rule 3.1 the "Mail Box" rule. The Court set a hearing date of June 25, 2010 to resolve these issues. CP. 316-17 Paragraph 4.

On May 21, 2010, the Department filed a Motion to Strike Plaintiff's Untimely motion for Summary Judgment and Untimely Motions to Compel and for Sanctions and Defendant's Motion to Dismiss for Want of Prosecution. CP. 309- 48. On June 4, 2010 Thurston County Superior Court Judge Paula Casey granted the Departments motion and dismissed Mr. McKee's case. Judge Casey did not consider any lesser sanctions and there were no findings of facts or conclusions of law entered to identify why Judge Casey dismissed this case.

## **II. ASSIGNMENT OF ERROR**

- a. The trial Court erred by dismissing this case when Defendant's were partly to blame for the prolonging of the case;
- b. The trial Court erred by dismissing this case when Mr. McKee obeyed Judge Casey's oral ruling to have discovery or some other motion in by May 7, 2010;

- c. The trial court erred by dismissing this case pursuant to CR 41(b) when a trial date was set for May 14, 2010;
- d. The trial court erred by not considering a lesser sanction than dismissal.

### **III. ISSUES PRESENTED**

- a. Did the trial Court lack inherent authority to involuntarily dismiss Mr. McKee's civil action where such dismissal is absent any findings of fact or conclusions of law?
- b. Is the trial Court's involuntary dismissal of Mr. McKee's civil action permissible under CR 41(b)(1) where Mr. McKee's law suit was previously noted for trial?
- c. Did the trial Court abuse its discretion when it dismissed Mr. McKee's civil action without consideration, on the record, of alternative sanctioning less severe than dismissal before ordering the case dismissed?
- d. Is Mr. McKee entitled to statutory attorney fees and costs if he prevails on this appeal?

### **IV. ARGUMENT**

- a. The trial Court Lacks The Inherent Authority to Involuntarily Dismiss Mr. McKee's Lawsuit Where Such Dismissal Is Absent Any Findings of Facts or Conclusions of Law.

“The right of access to the courts is rooted in the petition clause of the First Amendment to the United States Constitution.” In Re Addleman, 139 Wn.2d 751, 754, 991 P.2d 1123 (2000) quoting *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972). Mr. McKee’s right of access to the court has been debilitated by the defendant’s actions against him. First, the Defendant’s denied Mr. McKee his freedom of movement and access to the law library by placing him in administrative segregation. CP 377 App. S. Second, the Defendant transferred Mr. McKee to a new facility. CP. 486, App. T. Such transfers create undo hardships, including the long delays of transferring offender property. Third, Mr. McKee was denied his legal materials for an extensive period after being placed in segregation and latter transferred.

Mr. McKee had to proceed through the Defendant’s administrative process in order to obtain his legal belongings, while the defendant purposely denied him all of his legal property. Additionally, the Attorney Generals Office ordered the Department to deny Mr. McKee his legal belongings. CP. 490, App. T. As a result, the Defendant’s actions offend Mr. McKee’s First

Amendment rights<sup>1</sup>. The Defendant's abuse of authority amounts to retaliation in the form of penal punishment for the exercise of his Constitutional rights. See eg. *Farr v. Blodgett*, 810 F.Supp. 1485 (1993); *Crawford-Al v. Britton*, 523 US 574, 588 N. 10 (1998) (quoting *Addleman*, 139 Wn.2d at 754). Had the trial Court not dismissed Mr. McKee's claims, ruled on the merits of the case, and considered the Defendant's numerous constitutionally infringing actions against Mr. McKee, it is quite probable that the Court would have found that the claims he had raised are meritorious, and the Defendant's numerous actions against the Plaintiff were retaliatory, unethical and constitutionally offensive.

The State Supreme Court in *Addleman* favored the 6<sup>th</sup> Circuits three part test to determine, specifically in cases involving prison litigation, how retaliation by the Defendant's may be established. There, the Court ruled that the lower courts must determine "(1) the Plaintiff engaged in protected conduct; (2) an adverse action was taken; and (3) there is at least a partial casual

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<sup>1</sup> "The reason why such retaliation offends the constitution is that it threatens to inhibit exercise of the protected right. Retaliation is thus akin to an "unconstitutional condition" demanded for the receipt of a government provided benefit." *Id.* (refereeing to IRSB actions against prisoner for his lengthy history of filing litigation against numerous prison officials.)

relation between the protected conduct and the action.” Addleman, 139 Wn.2d at 754 (quoting Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6<sup>th</sup> cir. 1999)(ruling that the IRSB’s denial of parole is clearly an adverse action). “Inmates have well-established Constitutional right to access the courts, based in part on the first Amendment...” Id. at 391 (Bracket’s Mine). Mr. McKee’s right to file his civil suit against the defendant is protected conduct and the courts are wary of allowing state action that chills this first Amendment activity. See e.g. Richard v. Thompson, 130 Wn.2d 368, 376-77, 922 P.2d 1343 (1996). Segregation, transfer and the subsequent denial of Mr. McKee’s legal property is an adverse action against Mr. McKee as he is in the custody and control of the Department while pursuing his civil action. CP. 377-402, App. S.

The defendant necessarily dictates Mr. McKee’s residence, the property he may have, his mail, and his access to the courts by the use of the facility law library. Mr. McKee is forced to maneuver through all of the administrative channels first before he can even attempt to comply with the orders, rules and other statutory obligations of the Court. Here the Defendant blatantly pursued administrative actions against Mr. McKee which caused him to be unprepared and untimely within the court’s strict orders throughout

the various stages of his pre-trial litigations. The connection between the Defendant's adverse administrative actions against Mr. McKee and his civil filings are beyond casual, they are undeniable facts of constitutional infringement. After all, if the Defendant is permitted to continually deny plaintiff's their legal materials during the course of their litigations against the Department, as detailed herein against Mr. McKee, the Defendant's are thereby empowered to deny all plaintiff's the opportunity to fairly present their facts and claims to the courts for adequate and necessary judicial relief. Mr. McKee was denied meaningful opportunity to present his claims to the Court. The defendant's actions of withholding Mr. McKee's legal possessions, placing him in segregation, and then transferring him to a new facility across the State are all inherently connected and together caused Mr. McKee to unduly suffer while perusing a constitutionally protected activity against the Defendant.

**b. The Trial Court's Involuntary Dismissal of Mr. McKee's Civil Action Is Not Permissible under CR 41(b)(1) Because Mr. McKee's Law Suit was previously noted for trial.**

"A court of general jurisdiction has the inherent power to dismiss actions for lack of prosecution, but *only* when no court rule or statute governs the circumstances presented." *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166-67, 750 P.2d 1251 (1988)(emphasis added)(footnote omitted)(quoting *Foss Maritime Co. v. City of Seattle*, 107 Wn.App. 669, 27 P.3d 1228, 1229 (2001). In *Thorp Meats*, the Supreme Court explained that a trial court has inherent authority to dismiss an action for want of prosecution only "where dilatoriness of a type not described by CR 41(b)(1) is involved." *Thorp Meats*, 110 Wn.2d at 169. "Dilatoriness of a type not described by CR 41(b)(1)' refers to unacceptable litigation practices other than mere inaction, whatever the duration." *Wallace v. Evans*, 131 Wn.2d 572, 577, 934 P.2d 662 (1997) (quoting *Thorp Meats*, 169).

Here, the court dismissed Mr. McKee's civil action for not filing a motion on the merits. Mr. McKee instead filed a motion for summary judgment and two motions to compel for sanctions; all with a noting date of May 14, 2010 ( ). The trial court's dismissal does not follow the State Supreme Court's reasoning of "unacceptable litigation practices". Mr. McKee filed a civil action in good faith with the short notice and time he was allotted to file a

motion on the merits, as the trial court required. Thus, the trial court did not have inherent authority to dismiss the case and CR 41(b) applies.

If a case is noted for trial before a hearing on a motion to dismiss under CR 41(b), "the court *cannot* dismiss the action for failure to prosecute. *Foss* 27 P.3d at 1231." As the Supreme Court held in *Thorp Meats*, "[w]e conclude that

the final sentence of CR 41(b)(1) means precisely what it says, a case shall *not* be dismissed for want of prosecution if it is noted for trial before the hearing on the motion to dismiss. The rule. . . thus limits the power of the trial court to dismiss for failure to prosecute after the issue is joined and the case noted for trial. 110 Wn.2d at 168-69. Because the language is mandatory, "[i]t follows that in ruling on a motion to dismiss pursuant to CR 41, the trial court may not generally consider the merits of the case nor the hardship which application of the rule may bring." *Thorp Meats*, 110 Wn.2d at 168. The final sentence in CR 41(b)(1) "was promulgated to encourage cases to be heard on the merits, the courts recognizing that involuntary dismissal for want of prosecution 'is punitive or administrative in nature and every reasonable opportunity should be afforded to permit the parties to reach the merits of the controversy.'" *Thorp Meats*, 110 Wn.2d at 167 (quoting *Yellam v. Woerner*, 77 Wn.2d 604, 608, 464 P.2d 947 (1970)).

Thus, the trial court had no authority to dismiss the case regardless of the fact that Mr. Mckee was unable to satisfy the court's strict requirement to quickly file a motion on the merits, other than summary judgment. Mr. Mckee's action should not have been

dismissed for lack of prosecution. Any hardship that the department may have experienced as a result of a delay to have Mr. Mckee file an alternative motion on the merits would have been harmless.

This court has already vacated trial court decisions similar to Mr. Mckee's by ruling that "CR 41(b)(1) does not distinguish between the procedural posture of an action. It states clearly a trial court cannot dismiss an action if it is noted for trial prior to a hearing on a motion for dismissal for want of prosecution." *Business Services of America II, Inc. v. WaferTech, LLC.*, 159 Wn.App. 591, 245 P.3d 257, 260 (2011).

**C. The Trial Court Abused Its Discretion When It Dismissed Mr. Mckee's Civil Action Without first Considering Any Alternative Sanctions Less Severe Than Dismissal.**

The abuse of discretion standard governs review of sanctions for noncompliance with discovery orders. "[A] trial court has broad discretion as to the choice of sanctions for violation of a discovery order." "[D]iscretionary determination should not be disturbed on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." "[The trial court's] reasons

should, typically, be clearly stated on the record so that meaningful review can be had on appeal." A motion for reconsideration and motion to vacate a dismissal are to be decided by the trial court in exercise of its discretion and its decision will be overturned only if the court abused its discretion. *Rivers v. Washington State Conference of Mason Contractors, et al.*, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002) (brackets original).

The trial court abused its discretion in dismissing Mr. Mckee's civil action as a sanction for not filing a motion on the merits as recommended by the court. In fact, the court merely suggested, on the record, that "you [sic] need to have *something* filed by next Friday." (CP 330; App. U) (emphasis added).

Mr. Mckee filed his complaint on February 21, 2008. He did not ask for a discovery schedule at that time because such a request was not necessary where the trial court may conduct hearings on affidavits alone in public records cases.<sup>2</sup> However, Mr. Mckee did eventually conduct discovery in this case by submitting several sets of interrogatories and requests for production of documents on the defendant (DOC) to substantiate his claims (App. p). When Mr. McKee did not receive the requested discovery he

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<sup>2</sup> See, RCW 42.56.550(3)

Requested a CR 26(i) conference call with the court. On December 14, 2008, the defendant responded to Mr. McKee's fifth set of interrogatories by informing him that his discovery request was not ready for disclosure and requested another continuance (App. P; CP 372). Mr. McKee again requested a conference call to resolve the discovery issues and on January 12, 2009, the defendant responded by refusing to schedule a conference-call for discovery resolution (App. Q; CP 373). On August 21, 2009, Mr. McKee filed a motion requesting the trial Court to set a case schedule (Docket No. 68). The court entered a case schedule on September 3, 2009, setting trial for December 18, 2009 (Docket No. 77). On December 22, 2009, the Court entered a new case schedule order setting trial for May 14, 2010 (Docket No. 100).

On April 30, 2010, the parties participated in a hearing on Mr. McKee's motion for an order staying the case (App. U; CP 319). At the hearing Mr. McKee informed the court he would file a discovery motion (App. U; CP 330). The Court then informed Mr. McKee that he needed to file a motion on the merits, as the trial date was two weeks away. *Id.* Mr. McKee specifically stated that he would file a motion a motion for summary judgment. *Id.* The Court then responded that motions for summary judgment "generally take

28 days”. *Id.* The court then asked Mr. McKee, without knowing if the Court could inquire such a request, whether or not he would be willing to waive penalties for the duration of the continuance of the trial date. *Id.* McKee respectfully denied this impromptu request waiver of penalties by the court because the numerous delays that were already mounted were due to the defendant’s prolonging the proceedings. *Id.* Mr. McKee was not inclined to waive penalties where the waiver was neither necessary nor prudent, especially considering the fact that the defendant had already delayed the case against him on several prior occasions.

On May 7<sup>c</sup> 2010, Mr. McKee provided the defendant’s counsel a copy of his motion for summary judgment, and two motions to compel with sanctions; all with a noting date of May 14, 2010 (App. V; CP 128-29; App. W; CP 10 and App. X; CP \_\_\_\_). The court set the motions for hearing on June 25, 2010.<sup>3</sup> Mr. McKee was not able to present an alternative motion on the merits other than his summary judgment motion and motions to compel by the May 14, 2010 trial date.

“It is a general policy of Washington Courts not to resort to

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<sup>3</sup> Mr. McKee never actually received any notice by the Court of the June 25, 2010--trial date. Mr. McKee’s only notice that the trial date was set on this matter was provided by the Defendant’s Motion to Strike Plaintiff’s “Untimely” Motion for Summary Judgment and “Untimely” Motions to Compel—response (page 2).

dismissal lightly.” *Rivers* at 686. “When a trial court imposes dismissal or default in a proceeding as a sanction for violation of a discovery order, it must be apparent from the record that (1) the party’s refusal to obey the discovery order was willful or deliberate, (2) the party’s actions substantially prejudiced the opponent’s ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed.” *Id.*

Mr. McKee’s inability to file a motion on the merits, in accordance with the trial court’s commentary regarding plaintiff’s intended filing of summary judgment motion, cannot be construed as a willful or deliberate refusal to obey the trial court’s order to file a different motion on the merits. Mr. McKee has made numerous requests for discovery, while administratively segregated, subsequently transferred, and further delayed by the defendant’s actions failing to produce requested discovery.<sup>4</sup> A stay of the proceedings so that Mr. McKee could prepare a motion on the merits, other than a summary judgment, would not have prejudiced the defendant as many of the previous delays found in this case were a result of the defendant’s actions against the plaintiff. See,

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<sup>4</sup> See, CP 16; CP 317, App. O; CP 372, App P; CP 373, App. Q; CP 375, App. R; CP 505-16

CP 377, App. S (Where defendant placed Mr. McKee in administrative segregation); CP 490, App. T (Where defendant transferred Mr. McKee to a new facility); CP 486, App. T (Where defendant, by order of the Attorney General's office, denied Mr. McKee his legal property).

The trial court's order dismissing Mr. McKee's claim was not explicitly considered against lesser sanctions that would have sufficed given the facts and procedural history of this case. Here, the trial court failed to state, on the record, how dismissal was appropriate, reasonable, and just action against Mr. McKee.

D. MR. MCKEE IS ENTITLED TO ATTORNEY FEES  
AND COSTS IF HE PREVAILS ON APPEAL.

1. The prevailing party against a governmental entity is entitled to reasonable attorney fees and costs in accordance with RAP 18.1, and the PRA.

RAP 18.1 permits attorney fees and costs on appeal if the applicable law grants this right for an appeal. Under the PRA, an individual who prevails against the agency is entitled to all costs, including reasonable attorney fees. RCW 42.56.550(4). This court has determined the PRA authorizes attorney fees and costs on appeal. See, *Progressive Animal Welfare Soc'y v. Univ. of Wash.*,

114 Wn.2d 677, 690, 790 P.2d 604 (1990). If this Court overturns the trial ruling, Mr. McKee asks that reasonable and statutory attorney fees, and costs be granted. RCW 4.84.080(2).

#### V. CONCLUSION

For the reasons mentioned herein, the trial court's dismissal order should be vacated, the case remanded for further proceedings and Mr. McKee should be awarded statutory attorney fees and appellate costs associated with this appeal.

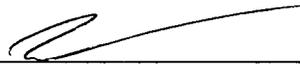
RESPECTFULLY SUBMITTED this 3rd day of October 2011.

  
\_\_\_\_\_  
Jeffrey R. McKee 882819, appellant pro se  
Coyote Ridge Corrections Center  
PO BOX 769 HA38  
Connell, Wa 99326  
(509) 543-5800

### GR 3.1 DECLARATION FO MAILING

I, Jeffrey R. McKee, appellant pro se, declare under penalty of perjury under the laws of Washington State that today I mailed an original and one copy of appellant's opening brief in Cause No. 40939-9-II, by placing said documents into the prison "Legal Mail" system, postage prepaid to the Clerk of the Court and to respondents counsel AAG, Sara J. Di Vitiro at their respective addresses of record.

DECLARED this 3<sup>rd</sup> day of October 2011

  
\_\_\_\_\_  
Jeffrey R. McKee 882819, appellant pro se  
Coyote Ridge Corrections Center  
PO BOX 769 HA38  
Connell, Wa 99326  
(509) 543-5800

# APPENDIX

## A

The CCA assures the state of Washington that at all times during the performance of this Contract that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied to benefits of the service, programs or activities performed by the CCA, or be subjected to any discrimination by the CCA upon which assurance Washington relies.

The CCA will not discriminate against any employee or applicant for employment because of race, creed, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The CCA will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CCA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

The CCA will, in all solicitations or advertisements for employees placed by or on behalf of the CCA, state that all qualified applicants will receive consideration for employment without regard to race, creed, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

**Section 9.13 Confidentiality of Records.** Unless otherwise provided, and when appropriate:

9.13.1 In the event the CCA shall obtain access to any records or files of Washington in connection with this Contract, or in connection with the performance of its obligation under this Contract, the CCA shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to Washington.

9.13.2 The CCA shall specifically keep confidential all records and files of WDOC Offenders; the CCA shall obtain prior written approval from Washington before releasing or disclosing the contents of any such records or files. The CCA further acknowledges that this requirement is in addition to and not in lieu of any other laws respecting confidentiality of WDOC Offender and criminal justice files and records.

9.13.3 Any breach of confidentiality by the CCA or third party agents of the CCA shall constitute good cause for Washington to cancel this Contract, without liability; and any and all information delivered to the CCA shall be returned to Washington.

9.13.4 Any WDOC waiver of an alleged breach of confidentiality by the CCA or third party agents of the CCA is not to imply a waiver of any subsequent breach.

9.13.5 This provision shall not be construed to prohibit CCA from releasing medical information in accordance with HIPAA for purposes of securing medical care for offenders.

**Section 9.14 Ownership of Material Information, Data, Computer Software Documentation, Studies and Evaluations.** Unless otherwise provided, and when appropriate the CCA agrees that all material, information, data, documentation, studies and evaluations produced in the performance of this Contract is the property of the WDOC and CCA.

**Section 9.15 Reporting.** The CCA shall submit to the WDOC Contract Monitor, on a quarterly basis, a written program report specifying progress made for each activity identified in the CCA's duties and obligations, regarding the performance of the Contract. Such written analysis shall be in accordance with the procedures developed and prescribed by the WDOC. The preparation of reports in a timely manner

# APPENDIX

## B



2010-dow

FORM D

OFFENDER NAME (LAST, FIRST) MCKEE, JEFFERY			DOC NUMBER 882819
DATE OF HEARING 12-26-06	TIME OF HEARING 1103AM	INFRACTION DATE 12-04-06	WAIVED 24 HOURS NOTICE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO WAIVED APPEARANCE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

OFFENDER'S PLEA: GUILTY \_\_\_\_\_ NOT GUILTY 652

INTERPRETER:  YES  NO NAME: \_\_\_\_\_

STAFF ADVISOR:  YES  NO NAME: UNIT MANAGER CAMACHO

COMPETENCY CONCERN:  YES  NO HEARING IMPAIRED:  YES  NO

WITNESS STATEMENT RETURNED:  YES  NO WITNESS STATEMENT DENIED  YES  NO REASON:

SUMMARY OF TESTIMONY (LIST WITNESSES TESTIFYING) / EVIDENCE USED / FINDINGS / REASONS FOR CONTINUANCES, DECISIONS, AND SANCTIONS / ANY RELEVANT INFORMATION)

Testimony attached

LIST EACH WAC 137-28 RULE VIOLATION SEPARATELY:					
INFRACTION NO.	FOUND		FOUND DISMISSED	FOUND REDUCED	REASON
	GUILTY	NOT GUILTY			
652	X				Based on the written report and the statements that followed.

SANCTION(S): X30 DISC SEG  
12-4-06 - 1-3-06

REASON FOR SANCTION(S): These actions will not be tolerated at this facility.

RECOMMENDATIONS (NON-SANCTION):

I HAVE RECEIVED A COPY OF THIS FORM

[Signature] 12-26-06 1103  
OFFENDER OR STAFF WITNESS SIGNATURE DATE TIME

T. Dobson 12-26-06 1103  
HEARING OFFICER SIGNATURE DATE TIME

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, REW 42.17, and RCW 40.14.

(174)

(26)

# APPENDIX

## C

Debbie R. Mcke  
Doc # 882819  
FLORENCE CORRECTIONS CENTER  
PO BOX 6900  
Florence, AZ 85032  
December 7, 2006

LYND FRENCH'S COORDINATOR  
PUBLIC RECORDS  
PO BOX 41100  
OLYMPIA, WA 98520  
Request

Re: Public Disclosure Request

Dear Mrs. French: I am requesting all writings  
BY this letter I am requesting for my interactive  
and related documents 11/2006  
# 7905-06 dated November 14, 2006

All writings and related documents  
interactions # 8010-000  
interactions and related documents

All writings and related documents  
for interactions # 7959-06  
Please

Also could you request for me the  
public record request form if available.  
Thank you for response within the  
terms and time frames of the PDA.

Sincerely,  
Debbie Mcke

(159)

(11)

# APPENDIX

## D



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1100

December 21, 2006

Mr. Jeffrey McKee, DOC #882819  
Florence Correction Center  
PO Box 6900  
Florence, AZ 85232

Dear Mr. McKee:

I have received your public disclosure request dated December 7, 2006, where you request all writings and related documents for your infraction numbers 7905-06, 8010-06W, and 7959-06. In addition, I have received your public disclosure request dated December 6, 2006, where you request all documents Mr. Lucas and Mr. Miller used in their investigation of your claims of retaliation by FCC/CCA staff.

It will take up to an additional ten (10) business days to gather any applicable documents. You can expect me to respond to this request with additional information on or before January 3, 2007.

Sincerely,

  
Lyn Francis  
Public Disclosure Coordinator

161

13

# APPENDIX

E

APPEN

Jeffrey R. McKee  
DOC# 882899  
FLORENCE CORRECTIONS CENTER  
P.O. Box 6900  
FLORENCE, AZ 85232

December 26, 2006

HEARINGS OFFICE  
FLORENCE CORRECTIONS CENTER  
P.O. Box 6900  
FLORENCE, AZ 85232

Re: Public Disclosure Request hearing # 8010-064

By this letter I am requesting any and all documents including E-mails, notes, letters, tape recordings and any thing related to infraction hearing # 8010-064.

I declare under penalty of perjury that this request was handed to Timothy DeBBS on this 26<sup>th</sup> day of December 2006

Signed *Jeff McKee*

Jeffrey R. McKee

# APPENDIX

## F



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1100

February 13, 2007

Mr. Jeffrey McKee. DOC #882819  
Stafford Creek Corrections Center  
191 Constantine Way GB27U  
Aberdeen, WA 98520

Dear Mr. McKee:

I am writing regarding the documents you requested for public disclosure of any and all documents related to infraction #7905-06 and #8010-06.

A total of 41 pages and one compact disc (CD) have been gathered responsive to your request. The Department's copy fee cost is \$0.20 per page, \$0.42 per CD, plus postage. Total copy fee and CD related to your request is \$8.62, plus \$1.83 postage.

Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$10.45, I will forward the requested documents to you. I had recently sent you a letter requesting \$0.59 for documents related to the infraction hearing of inmate Dirk Van Velzen. If you would like to combine these costs in one check, that is fine.

You also request all writings and related documents for infraction #7959-06. According to staff at Florence Corrections Center, there is no such infraction number. Also, recordings of telephone conversations are not releasable per RCW 9.73.095(3)(b) – **The contents of any intercepted or recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime RCW 9.73.030(a), RCW 9.73.050.**

Sincerely,

Rose E. Marquis  
Administrative Assistant

"Working Together for SAFE Communities"

169  
21

# APPENDIX

# G

JEFFREY R. MCKEE  
DOC#882819  
STAFFORD CREEK CORRECTION CENTER  
191 CONSTANTINE WAY GB27U  
ABERDEEN, WA. 98520

MARCH 7, 2007

Rose E. Marquis  
WA. DOC.  
P.O. BOX 41100  
Olympia, Wa. 98520

Dear Mrs. Marquis,

By this letter I am informing you that I will be sending you a check for my most recent PDA request. There should be tape recordings of both infraction #7905-06 and #8010-06. I actually handed the infraction hearing officer Timothy Dobson a hand written Public Disclosure Request from hearing #8010-06 that specifically requested the tape recorded hearing. As of this date I have had no response from Mr. Dobson of this request. Regardless there should be a tape recording of these hearings preserved per DOC policy. Please locate these hearing tapes and forward them to me per the PDA.

As for your February 13, 2007 letter where you state that the FLORENCE CORRECTION CENTER has no record of infraction #7959-06 this was written up for WAC #203 lying to staff by Investigator Scott D. Hatten in November 2006. I could send you a copy of the infraction if it would help.

As for your March 2, 2007 letter some of the documents I had requested were needed back at the time of the original request and are moot now. I would like all documents related to the grievance filed on Audray Rodriguez October 26, 2006. Documents related to the grievance filed to return legal documents handed to C/O Garcia on 10/11/06 at 8:30AM in SEG. Emergency return of legal documents 10/17/06 please note that there was a video recording made of this incident by the two C/O's mentioned and requested verbally a copy of this recording under the PDA and the contract between WA. State and F.C.C. to sergeant Beltron on October 18, 2006.

Please adjust the cost of these PDA requests minus the C.D. from the amount. Could the C.D. be converted to tape form as I have no current way to listen to C.D.'s in DOC.

Sincerely,

  
JEFFREY R. MCKEE

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# APPENDIX

H

APPEN

JEFFREY R. MCKEE  
STAFFORD CREEK CORRECTION CENTER  
191 CONSTANTINE WAY H3-A18L  
ABERDEEN, WA. 98520

MAY 1, 2007

Rose E. Marquis  
ADMINISTRATIVE ASSISTANT  
WASHINGTON DEPARTMENT OF CORRECTIONS  
P.O. BOX 41118  
OLYMPIA, WA. 98504-1118

Dear Mrs. Marquis,

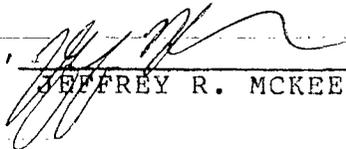
I have recieved the Public Disclosure documents I requested for infraction hearing #8010-06. There was only (2) documents related to this request.

In my letter to you dated March 7, 2007 I informed you that I had handed a Public Disclosure Request to the hearings officer Timothy Dobbson requesting a complete copy of the hearing to include the taped hearing, this was not included in the documents you provided me nor did you respond to this matter.

There was several pages I provided at this hearing to be put into the record as my written statement that also was not provided in the documents you sent me.

Where is the taped statement and proceedings for this hearing? Also why was the P.D.A. request I handed to the hearings officer never responded to?

Thank you for your quick response to this important matter.

Sincerely,   
JEFFREY R. MCKEE

176

28

# APPENDIX

I



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1100

May 3, 2007

Mr. Jeffrey McKee, DOC #882819  
Stafford Creek Corrections Center  
191 Constantine Way H3-A18L  
Aberdeen, WA 98520

Dear Mr. McKee:

I have received your letter dated May 1, 2007, regarding infraction #8010.06 as well as other issues. While I did respond to the other issues, you are correct in that I forgot to address this portion.

I had previously checked with Mr. Lucas at Florence Corrections Center regarding this infraction. His response was that there is nothing to provide or produces as you were found not guilty. He states that they don't keep the materials after the finding of not guilty.

I apologize for not responding to this as I had the information available when I wrote to you last time.

Sincerely,

A handwritten signature in cursive script that reads "Rose E. Marquis".

Rose E. Marquis  
Administrative Assistant

# APPENDIX

## J

Jeffrey R. McKee  
WDOC 882819  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen, WA 98520

December 1, 2007

Rose E. Marquis, Administrative Assistant  
Washington Department of Corrections  
PO BOX 41116  
Olympia, WA 98504-1116

RE: PUBLIC DISCLOSURE REQUEST FOR INFRACTION HEARING #8010-068

Dear Mrs. Marquis,

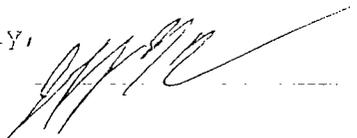
In a May 2, 2007 letter from you regarding the above Infraction Hearing number, I handed the Hearings Officer Timothy Dobbson a hand written Public Disclosure Request regarding the hearing stating " BY this letter I am requesting any and all documents including E-mails, notes, letters, tape recordings and any thing related to infraction hearing #8010-068" There was no reply to this but it should have been put into the hearing file.

You state that the case file was not kept but I believe that there should have been at the least a destruction schedule for the documents. Also by the letter handed to Mr. Dobbson they were on notice of a request for the records. Could you be more specific as to when these files were destroyed along with the taped hearing? I also made my public disclosure request for these records to your office before the finding of not guilty. Could these documents and taped hearing be in a file some where you have not checked?

On what date did you receive my Public Disclosure Request for these documents in your office?

Again please provide me with exactly why the PDA request to Mr. Dobbson was not responded to and when the records were destroyed.

Sincerely,



Jeffrey R. McKee

cc. file

180

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# APPENDIX

## K



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 · Olympia, Washington 98504-1100

December 13, 2007

Mr. Jeffrey McKee, DOC 882819  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

Dear Mr. McKee:

This letter is to acknowledge receipt of your public disclosure request received December 6, 2007 addressed to Ms. Marquis. You are asking for what happened to your public disclosure request that you gave to Mr. Timothy Dobbson at Florence Correctional Center in Arizona.

An additional 20 business days is needed to gather documents responsive to your request. You can expect a response on or before January 14, 2008.

Sincerely,

Gaylene Schave, Public Disclosure Specialist  
Public Disclosure Unit  
Department of Corrections  
(360) 725-8852

GS:PDU-1210

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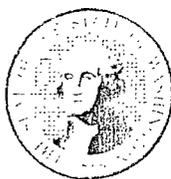
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# APPENDIX

L

Superior Court of the State of Washington  
For Thurston County

Paula Casey, Judge  
Department No. 1  
Richard A. Strophy, Judge  
Department No. 2  
Wm. Thomas McPhee, Judge  
Department No. 3  
Richard D. Hicks, Judge  
Department No. 4  
Christine A. Pomeroy, Judge  
Department No. 5  
Gary R. Tabor, Judge  
Department No. 6  
Chris Wickham, Judge  
Department No. 7  
Anne Hirsch, Judge  
Department No. 8



BUILDING NO. 2, COURTHOUSE  
2000 LAKERIDGE DRIVE S.W. • OLYMPIA, WA 98502  
TELEPHONE (360) 786-5560 • FAX (360) 754-4060

Christine Schaller  
Court Commissioner  
709-3201  
Indu Thomas  
Court Commissioner  
709-3201

Marti Maxwell  
Superior Court Administrator  
Gary Carlyle  
Assistant Superior  
Court Administrator  
Ellen Goodman  
Drug Court Program  
Administrator  
357-2482

June 3, 2008

Jeffrey McKee, #882819  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen WA 98520

Re: McKee v. State DOC  
Thurston County Cause No. 08-2-00386-5

Dear Mr. McKee:

Enclosed please find a Case Schedule Order as discussed at the status conference on May 30, 2008. Please review the Order, sign it and mail it to Mr. Howell in the enclosed envelope.

Thank you for your attention to this matter.

Sincerely,

Trina Wendel  
Judicial Assistant, Dept. 7

/tw

c: Jason Howell

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SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY

JEFFREY R. MCKEE  
  
Plaintiff(s),  
  
v.  
  
STATE DOC  
  
Defendant(s).

NO. 08-2-00386-5  
  
CASE SCHEDULE ORDER  
  
Judge Chris Wickham  
  
**(CLERK'S ACTION REQUIRED)**

**I. TRIAL AND HEARINGS**

NOV 24, 2008 Trial, at 9:00 a.m., for 3 court days, not including Friday.  
[ ] Jury. [ X ] Bench. [Clerk: Docket this item.]

NOV 7, 2008 Pretrial conference at 2:30 p.m.. See below for required submissions.  
[Clerk: Docket this item.]

OCT 10, 2008 Last date to hear dispositive motions. Filing must comply with LCR  
5(b)(1). Moving party must note hearing.

**II. CASE ADMINISTRATION**

SEP 10, 2008 Discovery cut-off date. All discovery must be **concluded** by this date.  
Requests for discovery must permit response within the time permitted  
by the Civil Rules and before this deadline.

OCT 3, 2008 Last date for hearing to continue or change trial date.

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1 JUN 30, 2008 Last date to file jury demand.

2  
3 **III. DISCOVERY ADMINISTRATION**

4  
5 **Counsel / litigants must be familiar with the Additional Provisions, below.**  
6 **[Counsel: All dates must be sooner than the discovery cut-off date established by**  
7 **the court.]**

8 Last date to disclose fact witnesses expected to be called at trial.

9 JUL 18, 2008 Plaintiff

10 AUG 8, 2008 Defendant

11 SEP 10, 2008 Last date to depose fact witnesses

12 Last date to disclose expert witnesses expected to be called at trial and submit reports of those  
13 experts to opposing party.

14 JUL 18, 2008 Plaintiff

15 AUG 8, 2008 Defendant

16 AUG 29, 2008 Rebuttal

17 SEP 10, 2008 Last date to depose expert witnesses

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21 **IV. ALTERNATIVE DISPUTE RESOLUTION**

22 SEP 25, 2008 Last date to conclude private mediation arranged by the parties.

23  
24 **V. ADDITIONAL PROVISIONS**

25 1. **Pretrial Conference.** At the pretrial conference all parties shall submit (1) a trial brief, (2)  
26 a list of witnesses in order of presentation, (3) all trial exhibits, for identification and  
27 marking, with copies for court and opposing counsel, and (4) jury instructions (see LCR 51

1 for required form).

- 2 2. **Motions in Limine.** Motions in limine must be noted for the Civil Motion calendar on the  
3 Friday before trial. Filing and service of motions, briefs and all supporting materials shall  
4 comply with the time frames provided in CR 5 and LCR 5(b)(2). Motions in limine will be  
5 discussed at the pretrial conference and the time for hearing changed if appropriate.
- 6 3. **Dispositive Motions.** Objections to evidence for dispositive motions will usually be heard  
7 before the scheduled date for hearing the motion. The objecting party must note the  
8 objections one week or more before the motion hearing, or must seek continuance of the  
9 motion.
- 10 4. **Discovery Deadlines.** Except as specifically provided, discovery deadlines ordered herein  
11 do not limit or expand the rights and responsibilities provided in CR 26 - 37 for discovery  
12 conducted before the applicable deadline; nor do they affect the rights of enforcement  
13 provided by those rules or other law.
- 14 5. **Fact Witness.** Fact witness disclosure shall include name, address and telephone number,  
15 plus a brief summary of the witness' knowledge. Fact witnesses discovered after the  
16 deadline must be disclosed within 4 business days after discovery by a party or counsel;  
17 and counsel shall be prepared to document the circumstances of discovery. Fact witnesses  
18 disclosed after the deadline will be permitted to testify without sanction only upon a  
19 showing of exceptional circumstances.
- 20 6. **Expert Witness.** Expert witness disclosure shall include a *curriculum vitae* from the  
21 expert and a contact phone number or address to schedule a deposition. This Order does  
22 not require preparation of **expert witness reports**, but if a report is prepared, it must be  
23 delivered by the deadline date. If the expert is not expected to prepare a report, all of the  
24 information required by CR 26(b)(5)(A) shall be disclosed by the deadline. This provision  
25 does not preclude either party from seeking earlier discovery by other means.
- 26 7. **Health Care Practitioners.** Health care practitioners who have rendered treatment shall  
27 be disclosed as fact witnesses, even though they may render expert medical opinions - and  
28 in such event, they shall also be disclosed as expert witnesses.
8. **Depositions.** Counsel should endeavor to schedule depositions at times when all counsel  
can be present. However an unavailable attorney is expected to resolve conflicts by  
providing an associate attorney; and unavailability will not be grounds to expand a deadline  
or continue the trial except for extraordinary circumstances.

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**9. Alternative Dispute Resolution.** If Alternative Dispute Resolution is ordered, the provisions of LCR 87 shall apply. Plaintiff's counsel must file and serve a Notice of Request to Participate in ADR.

Dated: June \_\_\_\_\_, 2008.

\_\_\_\_\_  
Chris Wickham, Judge

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney for Defendant

(365)

(12)

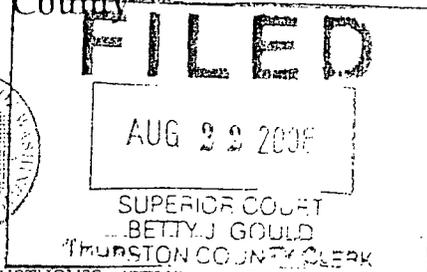
# APPENDIX

## M

Superior Court of the State of Washington

For Thurston County

Paula Casey, Judge  
Department No. 1  
Richard A. Strophy, Judge  
Department No. 2  
Wm. Thomas McPhee, Judge  
Department No. 3  
Richard D. Hicks, Judge  
Department No. 4  
Christine A. Pomeroy, Judge  
Department No. 5  
Gary R. Tabor, Judge  
Department No. 6  
Chris Wickham, Judge  
Department No. 7  
Anne Hirsch, Judge  
Department No. 8



BUILDING NO. 2, COURTHOUSE  
2000 LAKERIDGE DRIVE S.W. • OLYMPIA, WA 98502  
TELEPHONE (360) 786-5560 • FAX (360) 754-4060

Christine Schaller  
Court Commissioner  
709-3201  
Indu Thomas  
Court Commissioner  
709-3201

Marti Maxwell  
Superior Court Administrator  
Gary Carlyle  
Assistant Superior  
Court Administrator  
Ellen Goodman  
Drug Court Program  
Administrator  
357-2482

August 22, 2008

Jeffrey McKee, #882819  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen WA 98520

Re: McKee v. State DOC  
Thurston County Cause No. 08-2-00386-5

Dear Mr. McKee:

I am in receipt of your letters regarding the proposed Case Schedule Order.

No party has filed a jury demand in this case. Until such pleading is filed, this will remain set as a bench trial.

You state you have a conflict on October 10, 2008. With the exception of the trial and pretrial conference dates, all other dates contained in the Case Schedule Order are deadlines, not actual dates. I fail to see a conflict with any of the dates contained in the Case Schedule Order.

Sincerely,

Trina Wendel  
Judicial Assistant, Dept. 7

/tw

c: Jason Howell  
court file

367

14



# APPENDIX

N

23

Jeffrey R. McKee  
WDOC 882819  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen, Wa 98520

September 1, 2008

Trina Wendal, Judicial Assistant, Dept. 7  
Thurston County Superior court  
2000 Lakeridge Drive SW BLDG #2  
Olympia, Wa 98502

RE: McKee v. WDOC, et al. Thurston County Superior Court  
Cause No. 03-2-00386-5

Dear Ms. Wendel,

In reference to the above cause and your August 22, 2008, response letter. I apologize for any confusion, but I responded to the case schedule order with objections June 6, 2008, and was awaiting your response before proceeding further, as a result I have missed or will miss most of the deadlines. Are we currently under the original court schedule deadlines or will you renew and adjust the dates? Please provide me with the current status of the case schedule order so I may enter a motion or appropriate remedy to this problem.

I have provided an SASE for you to respond to this important matter.

Sincerely,



Jeffrey R. McKee

cc. AAG, Jason M. Howell  
file

369

16

# APPENDIX

## O



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

November 14, 2008

Jeffrey McKee, DOC #882819  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584

RE: McKee v. Department of Corrections  
Thurston County Superior Court Cause No. 08-2-00386-5

Mr. McKee:

Enclosed please find my objections to your most recent discovery request entitled "Plaintiff's Fifth Set of Interrogatories and Requests for Production of Documents." The Defendants need more time to complete the responses to this request. I anticipate these responses will be placed in the mail to you on or before December 1, 2008.

Please let me know if you have any questions. Thank you for your time.

Sincerely,

JASON M. HOWELL  
Assistant Attorney General

JMH:sc  
Enclosure

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# APPENDIX

P



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

December 17, 2008

Jeffrey McKee, DOC #882819  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

**RE: McKee v. Department of Corrections**  
**Thurston County Superior Court Cause No. 08-2-00386-5**

Dear Mr. McKee:

I am in receipt of your letter dated December 11, 2008. In my previous letter to you I stated that supplemental responses and documents would be sent to you on December 1, 2008. However, I have met with unanticipated difficulty in obtaining responses and documents from Corrections Corporation of America pertaining to some of your requests. I have made contact with counsel for CCA and expect to resolve the difficulty in the near future. We have supplemental responses and documents available for many of your requests which we can provide to you now. This would necessitate a further fracturing of this request as we would need to provide an additional supplement after obtaining responses from CCA. Given the recent stay in this case, and the fact that the court has not entered a scheduling order, it would seem prudent to produce the entire supplementation at once. However, if you desire an immediate partial production of what is currently available, please notify me in writing and we will oblige your request.

Sincerely,

JASON M. HOWELL  
Assistant Attorney General  
Corrections Division

JMH/ket

372

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# APPENDIX

## Q



Rob McKenna  
ATTORNEY GENERAL OF WASHINGTON

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

January 12, 2009

Jeffrey McKee, DOC #882819  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

RE: McKee v. Department of Corrections  
Thurston County Superior Court Cause No. 08-2-00386-5

Mr. McKee:

I am in receipt of your letter dated December 19, 2008. I understand you wish to have a discovery conference call, however at this time I do not feel it would be productive as I am still in the process of supplementing responses to your Fifth Discovery Request.

I am enclosing with this letter a supplemental response, however anticipate that I will be sending you a second supplemental response within the next few weeks. Once you have received all of the responses and responsive documents, if you still take issue with specific objections or responses, please contact me at that time and we can discuss those specific items. As I'm sure you are aware, there is not currently a scheduling order in this case, therefore no discovery cutoff. Moreover, there is no court rule governing deadlines for supplementing discovery responses. However, I assure you that I am working diligently on gathering the responses and anticipate that I will be done supplementing your Fifth Discovery Request no later than January 30, 2009.

If you do not wish to wait until you receive all supplemental responses, then I request that you identify, in writing, which specific responses or objections to which you take issue, as your letter fails to identify any particular request or requests. Once I receive that information from you, I will schedule a discovery conference as soon as possible.

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# APPENDIX

## R

ATTORNEY GENERAL OF WASHINGTON

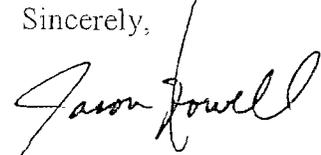
Jeffrey McKee, DOC #882819

January 12, 2009

Page 2

Please let me know if you have any questions. Thank you for your time.

Sincerely,



JASON M. HOWELL  
Assistant Attorney General

JMH:sc  
Enclosure

379  
21



Rob McKenna

# ATTORNEY GENERAL OF WASHINGTON

PO Box 40116 • Olympia WA 98504-0116 • Phone (360) 586-1445

February 2, 2009

Jeffrey McKee, DOC #882819  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

**RE: McKee v. Department of Corrections**  
**Thurston County Superior Court Cause No. 08-2-00386-5**

Mr. McKee:

On Friday afternoon, January 30, 2009, I received notification from counsel for CCA that additional responses and documents would be provided to supplement your fifth set of interrogatories and requests for productions. I anticipate that this will be the final supplementation for this set of discovery. CCA's attorney is expecting the documents by the middle of this week, at which time they will be forwarded to me. I will notify you if there is a delay in obtaining the documents from CCA. Otherwise, please expect this final supplementation in the very near future.

Sincerely,

Jason M. Howell  
Assistant Attorney General

JMH/drw

375  
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# APPENDIX

## S



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
 P.O. Box 41100 • Olympia, Washington 98504-1100

June 22, 2009

Mr. Jeffrey McKee, DOC 882819  
 Airway Heights Corrections Center  
 PO Box 2049 (KA 12U)  
 Airway Heights, WA 99001

Dear Mr. McKee:

This is a revised cost letter related to PDU-6878, your request for the following records:

- Any and all records, documents, emails, investigative reports, meta data, video, audio, etc., in any form in any location related in any way to your placement in Ad-Seg on 4/21/09 by CUS Dennis Cherry, including but not limited to all emails, correspondence, reports, and information leading up to the segregation and all reasons for it.
- Any and all records, emails, meta data, audio/video recordings on or at the Ad-Seg/IMU review or hearings, infractions, reports, recommendations, approvals for the Ad-Seg placement/transfer/sanction, to include all appeals and outcomes.

The two CDs that I included in the previous cost letter are actually responsive to PDU-6879...not 6878. Therefore, I have revised the cost for PDU-6878 as follows:

Copies	\$ .20 x 23	\$4.60
Postage		\$1.39
	Total	\$5.99

- Send a check or money order payable to the Department of Corrections.
- Write the PDU number of this request (PDU-6878) on the check or money order.

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*" Working Together for SAFE Communities "*

Mr. Jeffrey McKee, #882819

June 9, 2009

Page 2

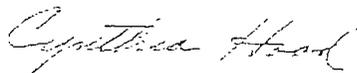
- Send payment to: Cynthia Hood, Public Disclosure Specialist  
Public Disclosure Unit  
Department of Corrections  
PO Box 41118  
Olympia WA 98504-1118

When payment is received, I will promptly mail the records to you. Please note that all records sent to incarcerated inmates are subject to Department mailroom policy guidelines. Your payment for copies of records requested under the Public Records Act does not ensure that these same records will be allowed into a secure prison facility [Livingston v. Cedeño, 186 P.3d 1055 (Wash. 2008)]. Should you wish to have records mailed to a third party on your behalf, please provide the name and mailing address along with your payment. Otherwise, the responsive records will be sent to you at your present location.

Additionally, the Department does not currently have the technological capability to provide secured redaction of meta data. Records are printed so they can be page stamped for tracking purposes and reviewed for any needed redactions. The Department cannot simply transfer an electronic record in its native format to a disk for disclosure, as to do so would release portions of meta data that cannot be disclosed due to the need to preserve technological security, and again there is no current resource to electronically redact this meta data for release.

If you choose not to pursue this request within 30 calendar days from the date of this letter, the file will be closed.

Sincerely,



Cynthia Hood, Public Disclosure Specialist  
Public Disclosure Unit  
Department of Corrections

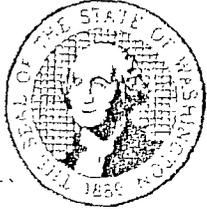
clh

cc: File PDU-6878

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**STAFFORD CREEK  
CORRECTIONS  
CENTER  
DISCIPLINARY  
HEARINGS  
OFFICE**

**SERIOUS INFRACTION COVER SHEET**

Office Use Only

Due Date      /      /       
 Non Neg.   
 Negotiable   
 Population   
 Seg - PHC   
 Ad-Seg/Unrelated   
 IMU

WAC Pts

<b>REVIEWER</b>	Please ensure that offender's name and DOC # is correct.		
	McKEE, Jeffrey	882819	04 / 06 / 09
	OFFENDER'S NAME: LAST, FIRST	DOC#	DATE OF INFRACTION
	Was offender placed on PHC in Segregation? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Current Points. <u>67</u>
If confidential information is being used, ensure that a confidential summary is attached to the infraction. Confidential information is to be placed in a separate sealed envelope & attached to the infraction packet. Route infraction packet with confidential information to the Shift Office, then to the Hearings Office.			

<b>HEARINGS CLERK</b>	The Hearings Clerk will provide the following information:		
	If Negotiable: <u>    </u> / <u>    </u> / <u>    </u> <u>    </u> / <u>    </u> / <u>    </u> Date sent to CUS      Return to Hearings Clerk by      Date received from Unit		
	_____ ASSIGNED COUNSELOR	NDA Signed: <input type="checkbox"/> YES <input type="checkbox"/> NO	
	ERD <u>    </u> / <u>    </u> / <u>    </u>	Date of Violation: <u>    </u> / <u>    </u> / <u>    </u>	Susp Sanctions. <u>    </u> Days
	A hearing must be held no later than SEG <u>    </u> / <u>    </u> / <u>    </u> Population: <u>    </u> / <u>    </u> / <u>    </u>		

EVIDENCE FOR HEARING: <input type="checkbox"/> YES <input type="checkbox"/> NO	INTERPRETER REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO
APPEARANCE WAIVED: <input type="checkbox"/> YES <input type="checkbox"/> NO	STAFF ADVISOR REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO

<b>APPEALS</b>	Due date back to Hearings Clerk. <u>    </u> / <u>    </u> / <u>    </u>	
	Each person handling this Appeal will write in the date they received the packet, and the date they forwarded it to the Associate Superintendent or returned it to the Hearings Clerk	
	DATE RECEIVED	DATE SENT ON
	Hearings Clerk	<u>    </u> / <u>    </u> / <u>    </u> <u>    </u> / <u>    </u> / <u>    </u>
Assoc Supt Of Support Services	<u>    </u> / <u>    </u> / <u>    </u> <u>    </u> / <u>    </u> / <u>    </u>	
Hearings Clerk	<u>    </u> / <u>    </u> / <u>    </u> <u>    </u> / <u>    </u> / <u>    </u>	

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# INFRACTION REVIEW CHECKLIST

Offender Name: McKee, Jeffrey	DOC # 882819	WAC # 663
-------------------------------	--------------	-----------

<input checked="" type="checkbox"/>	Examine the infraction to ensure that each field is filled in properly and written legibly.
<input checked="" type="checkbox"/>	Ensure the offender's name and DOC number are recorded correctly
<input type="checkbox"/>	Read the infraction report narrative and ensure the following elements are included: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Who?</li> <li><input checked="" type="checkbox"/> What?</li> <li><input checked="" type="checkbox"/> Where?</li> <li><input checked="" type="checkbox"/> When?</li> <li><input checked="" type="checkbox"/> Why?</li> <li><input checked="" type="checkbox"/> How?</li> </ul>
<input checked="" type="checkbox"/>	Check to be sure that the infraction violations at the top of the report correspond with the written information <i>and</i> are appropriate for the incident <small>NOTE: The reviewer may, 1) require that the report be revised, rewritten, or reinvestigated by the reporting staff member to ensure the alleged facts support the charges, or 2) add, dismiss, delete or reduce the indicated WAC violations as appropriate based upon the information and/or evidence provided by the reporting staff and any mitigating factors</small>
<input checked="" type="checkbox"/>	Ensure the report is factual, without assumptions, feelings, beliefs or what the reporting staff "thinks" may have happened
<input checked="" type="checkbox"/>	Ensure alleged victims, if any, of the incident are recorded and accurately documented in the "Name(s) of alleged victims of this incident" fields.
<input checked="" type="checkbox"/>	Ensure the report includes supporting documentation if the incident included. <ul style="list-style-type: none"> <li><input type="checkbox"/> Injuries? Medical Response?</li> <li><input type="checkbox"/> Witnesses?</li> <li><input type="checkbox"/> Property Damage?</li> <li><input type="checkbox"/> Use of Force?</li> <li><input type="checkbox"/> Teleincident Report?</li> <li><input type="checkbox"/> Other Supplemental Information?</li> </ul>
<input checked="" type="checkbox"/>	Ensure all evidence has been collected, secured, and logged properly in accordance with policy and facility procedures. Did you document: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Evidence taken?</li> <li><input type="checkbox"/> Evidence Case Number assigned?</li> <li><input checked="" type="checkbox"/> Whether or not the evidence was placed in an evidence locker?</li> <li><input checked="" type="checkbox"/> The disposition of the evidence if not placed in locker?</li> <li><input type="checkbox"/> Photos submitted?</li> </ul>
<input type="checkbox"/>	Complete the "Placed in Pre-hearing Confinement" field by checking the "Yes" or "No" boxes
<input type="checkbox"/>	If confidential information has been submitted, have you <ul style="list-style-type: none"> <li><input type="checkbox"/> Reviewed the information to ensure it is consistent with other reports?</li> <li><input type="checkbox"/> Checked to ensure the documents are marked or stamped as "Confidential"?</li> <li><input type="checkbox"/> Requested that the staff who received the information initiate DOC 05- 392, Confidential Information Report and forward it to designated facility staff?</li> <li><input type="checkbox"/> Included a summary of confidential information with the infraction report?</li> </ul>
<input checked="" type="checkbox"/>	The Initial Serious Infraction report (with attachments, if any) is complete. Sign and date the Initial Serious Infraction Report on the line labeled "Infraction Review Officer Signature" (Signature <i>must</i> be legible)
<input checked="" type="checkbox"/>	Send the infraction report and any supporting documents to the hearing clerk or designated facility staff
<input type="checkbox"/>	The Initial Serious Infraction report has been reviewed and is being returned for the following reason( s) Reason: _____
<input type="checkbox"/>	An investigation is required. Investigation assigned to _____ Name Date Time
<input type="checkbox"/>	Promptly resubmit the infraction report with the corrected / appropriate information, including this Infraction Review Checklist

REVIEWER'S SIGNATURE	PRINT NAME	DATE
----------------------	------------	------

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17, and RCW 40.14.



INITIAL SERIOUS INFRACTION REPORT

DATE OF INFRACTION 04/07/2009	OFFENDER NAME (LAST, FIRST) McKee, Jeffrey	DOC NUMBER 882819	HOUSING ASSIGNMENT H3-A26U
RULE VIOLATION #(S) 663			
TIME OCCURRED Approximately 2 PM	PLACE OF INCIDENT (BE SPECIFIC) CUS Office in the H-3 living unit		DATE OCCURRED 04/01/09
WITNESS (1)	DAYS OFF	WITNESS (3)	DAYS OFF
WITNESS (2)	DAYS OFF	WITNESS (4)	DAYS OFF

NARRATIVE

STATE A CONCISE DESCRIPTION OF THE DETAILS OF THE RULE VIOLATIONS, COVERING ALL ELEMENTS AND ANSWERING THE QUESTIONS OF WHEN? WHERE? WHO? WHAT? WHY? AND HOW?; DESCRIBE ANY INJURIES, PROPERTY DAMAGE, USE OF FORCE, ETC.; ATTACH ALL RELATED REPORTS

On 04/01/2009, at approximately 2:00 PM, offender McKee, Jeffrey DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last sentence it reads: "If you can't make either, let me know so I can file an emergency grievance. Thank you." The copies were not made at that time. His copies were made the next morning, Tuesday 04/02/09, and were completed on time. Copies in the H-3 unit are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was provided and the copies were made. I was being threatened by offender McKee by the grievance system if the copies were not made.

REPORTING STAFF NAME (LAST, FIRST) CUS Dennis Cherry	SHIFT 2 <sup>nd</sup> Shift	DAYS OFF Sat/Sun
EVIDENCE TAKEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE CASE NUMBER	EVIDENCE LOCKER NUMBER
DISPOSITION OF EVIDENCE (IF NOT PLACED IN LOCKER) Attached to this infraction		PHOTO SUBMITTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
PLACED IN PRE-HEARING CONFINEMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT		
LAST, FIRST 1)	Staff <input type="checkbox"/>	Volunteer/Visitor/Other <input type="checkbox"/>
	Inmate <input type="checkbox"/>	DOC#
LAST, FIRST 2)	Staff <input type="checkbox"/>	Volunteer/Visitor/Other <input type="checkbox"/>
	Inmate <input type="checkbox"/>	DOC#
RELATED REPORTS ATTACHED	<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> BACKGROUND MEMOS
	<input type="checkbox"/> STAFF WITNESS STATEMENTS	<input type="checkbox"/> MEDICAL
	<input type="checkbox"/> TELE-INCIDENT	<input type="checkbox"/> USE OF FORCE
	<input checked="" type="checkbox"/> OTHER (SPECIFY) Kite provided	

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INITIAL SERIOUS INFRACTION REPORT

DATE OF INFRACTION 04/07/2009	OFFENDER NAME (LAST, FIRST) Mckee, Jeffrey	DOC NUMBER 882819	HOUSING ASSIGNMENT H3-A26U
RULE VIOLATION #(S) 663			
TIME OCCURRED Approximately 2 PM	PLACE OF INCIDENT (BE SPECIFIC) CUS Office in the H-3 living unit.		DATE OCCURRED 04/03/09
WITNESS (1)	DAYS OFF	WITNESS (3)	DAYS OFF
WITNESS (2)	DAYS OFF	WITNESS (4)	DAYS OFF

NARRATIVE

STATE A CONCISE DESCRIPTION OF THE DETAILS OF THE RULE VIOLATIONS, COVERING ALL ELEMENTS AND ANSWERING THE QUESTIONS OF WHEN? WHERE? WHO? WHAT? WHY? AND HOW?; DESCRIBE ANY INJURIES, PROPERTY DAMAGE, USE OF FORCE, ETC.; ATTACH ALL RELATED REPORTS.

On 04/03/2009, at approximately 2:00 PM, offender Mckee, Jeffrey DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last paragraph it reads: "See attached Emergency Grievance, which I will not need to submit if the cert and copies are provided." The copies were not made. Copies in the H-3 unit are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was not provided. I was being threatened by offender McKee by the grievance system if the copies were not made. I believe he did file an emergency grievance and it was deemed non emergent

REPORTING STAFF NAME (LAST, FIRST) CUS Dennis Cherry		SHIFT 2 <sup>nd</sup> Shift	DAYS OFF Sat/Sun
EVIDENCE TAKEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE CASE NUMBER	EVIDENCE LOCKER NUMBER	PHOTO SUBMITTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
DISPOSITION OF EVIDENCE (IF NOT PLACED IN LOCKER) Attached to this infraction		PLACED IN PRE-HEARING CONFINEMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT			
LAST, FIRST 1)	Staff <input type="checkbox"/>	Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
LAST, FIRST 2)	Staff <input type="checkbox"/>	Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
RELATED REPORTS ATTACHED			
<input type="checkbox"/> SUPPLEMENTAL		<input type="checkbox"/> BACKGROUND MEMOS	
<input type="checkbox"/> STAFF WITNESS STATEMENTS		<input type="checkbox"/> MEDICAL	
<input type="checkbox"/> TELE-INCIDENT		<input type="checkbox"/> USE OF FORCE	
<input checked="" type="checkbox"/> OTHER (SPECIFY) Kite provided			

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SERIOUS INFRACTION REPORT

Institution: SCCC

Infraction Group Number: 10

STAFF REPORT

Name: MCKEE, Jeffrey R      DOC # 882819      Date: 4/1/2009

Number of rule(s) violated:      Time: 1400

663 - STRONGARMING/INTIMIDATION      Place: Living Unit

Details in full: On 04/01/2009, at approximately 2:00pm, offender McKee, Jeffrey DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last sentence it reads: "If you can't make either, let me know so I can file an emergency grievance. Thank you." The copies were not made at that time. His copies were made the next morning, Tuesday 04/02/09, and were completed on time. Copies in the H-3 units are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was provided and copies were made. I was being threatened by offender McKee by the grievance system if the copies were not made.  
Witnesses

DENNIS W. CHERRY

Reporting Staff (Print)

Reporting Staff Signature

FACT FINDING DURING HEARING

Was offender informed of right to remain silent?  Yes  No      Date of Hearing: 4/20/2009

PLEA: NOT GUILTY: 663

GUILTY.

Did the offender make statement after being informed of his/her rights?  Yes  No

If so, what? This is retaliation for filing a lawsuit and grievance against CUS Cherry. I just wanted to know if I had to go to the next step in the process.

DECISION

Finding: NOT GUILTY: 663

DISMISSED:

GUILTY.

REDUCED.

Facts and evidence found:

Sanction(s): NONE

Reason for sanction(s)

Recommendations (Non-Sanction):

Hearings Officer

Superintendent

384

31



DISCIPLINARY HEARING MINUTES AND FINDINGS

Infraction Group Number: 10

Offender Name (Last, First): MCKEE, Jeffrey R. DOC Number: 862619

Date of Hearing: 4-20-09 Time of Hearing: 1308 Infraction Date: 4/1/2009 Waived 24 Hours Notice: [ ] Yes [X] No Waived Appearance: [ ] Yes [X] No

OFFENDER'S PLEA: Guilty No: Guilty 663

INTERPRETER: [ ] Yes [X] No Name: \_\_\_\_\_

STAFF ADVISOR: [ ] Yes [X] No Name: \_\_\_\_\_

COMPETENCY CONCERN: [ ] Yes [X] No HEARING IMPAIRED: [ ] Yes [ ] No

WITNESS STATEMENT RETURNED: [X] Yes [ ] No

WITNESS/STATEMENT DENIED: [X] Yes [ ] No

REASON: CUS CHERRY IS ENFORCING STAFF

SUMMARY OF TESTIMONY (LIST WITNESSES TESTIFYING, EVIDENCE USED, FINDINGS, REASONS FOR CONTINUANCES, DECISIONS AND SANCTIONS/ANY RELEVAANT INFORMATION)

THIS IS RETALIATION FOR FILING A LAWSUIT AND GRIEVANCE AGAINST CUS CHERRY. I JUST WANTED TO KNOW IF I HAD TO GO TO THE NEXT STEP

LIST EACH WAC 137-26 RULE VIOLATION SEPARATELY: Late Fee Process

Table with columns: INFRACTION NO, FINDING (GUILTY, NOT GUILTY), FINDING DISMISSED, FINDING REDUCED, REASON. Row 1: 663, X, [ ], [ ], WRITTEN TESTIMONY OF STAFF AND OFFENDER'S TESTIMONY

SANCTION(S): None

REASON FOR SANCTION(S):

RECOMMENDATIONS (Non-Sanction):

I HAVE RECEIVED A COPY OF THIS FORM

Offender or Staff Witness Signature: [Signature] Date: 4/20/09 Time: 13:22

Hearing Officer Signature: [Signature] Date: 4-20-09 Time: 1321

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14

PAGE OF (85) (32)



H30266

Infraction Group Number 10

Table with 4 columns: Offender Name, DOC Number, Facility, Date. Includes handwritten entries for MCKEE, Jeffrey R., 882819, SCCC, 4/10/2009.

REASON FOR HEARING (Include all Allegations of Misconduct, if Appropriate)
663 - Using physical force, intimidation or coercion against any person

I HAVE BEEN PROVIDED A CERTIFIED SIGN LANGUAGE INTERPRETER
I HAVE BEEN PROVIDED WITH A SPANISH TRANSLATION OF THE CHARGES AGAINST ME OR
SE ME HA DADO UNA TRADUCCION AL ESPANOL DE LOS CARGOS EN MI CONTRA EL DIA

OFFENDER RIGHTS.
YOU HAVE THE RIGHT TO REMAIN SILENT AT THE HEARING. IF YOU CHOOSE TO REMAIN SILENT, YOUR SILENCE MAY BE USED AGAINST YOU AND THE DECISION WILL BE BASED ON THE EVIDENCE PRESENTED

Table with 8 columns: STAFF NAME, STATEMENT, WITNESS, POSITION, OFFENDER NAME, STATEMENT, WITNESS, DOC NUMBER. Includes handwritten entries for Kus cherry and Dahne.

CRIMINAL CHARGES MAY BE PENDING ANYTHING YOU SAY HENCEFORTH MAY BE USED AGAINST YOU IN A COURT OF LAW.

STATUS OF CRIMINAL CHARGES NONE UNKNOWN PENDING IN COUNTY CHARGES

- YOU HAVE THE RIGHT TO REVIEW ALL RELATED REPORTS AND A SUMMARY OF ANY CONFIDENTIAL INFORMATION
YOU MAY REQUEST A STAFF ADVISOR
YOU MAY REQUEST AN INTERPRETER (if unable to speak and/or understand the English language)
YOU MAY REQUEST A CERTIFIED SIGN LANGUAGE INTERPRETER IF YOU ARE HEARING IMPAIRED
YOU MAY APPEAL THE DECISION AND/OR SANCTIONS TO THE SUPERINTENDENT/FACILITY SUPERVISOR
IF YOU ARE AN INDETERMINATE SENTENCE CASE AND WITHIN 60 DAYS OF AN ESTABLISHED RELEASE DATE, A GUILTY FINDING COULD RESULT IN THE CANCELLATION OF YOUR RELEASE DATE.

I, \_\_\_\_\_, DOC # \_\_\_\_\_ WAIVE MY RIGHT TO THE REQUIRED 24 HOURS NOTICE PRIOR TO BEING SEEN BY THE DISCIPLINARY HEARING OFFICER AND AUTHORIZE THE HEARING OFFICER TO MAKE A DISPOSITION REGARDING THE INFORMATION AND EVIDENCE PRESENTED TO THE HEARING OFFICER AS PERTAINS TO MY PARTICULAR SITUATION

COPY OF THIS FORM AND INFRACTION, WITH ATTACHMENTS, RECEIVED

Handwritten signatures and dates: 4/14/09 10:30, 4/14/09 0925

Handwritten numbers: 386, 33, 87



INITIAL SERIOUS INFRACTION REPORT

DATE OF INFRACTION 04/07/2009	OFFENSE NAME (LAST, FIRST) McKee, Jeffrey	DOC NUMBER 882819	HOUSING ASSIGNMENT H3-A26U
RULE VIOLATION(S) 663			
TIME OCCURRED Approximately 2 PM	PLACE OF INCIDENT (BE SPECIFIC) CUS Office in the H-3 living unit.	RECEIVED ? APR 10 2009	DATE OCCURRED 04/01/09
WITNESS (1)	DAYS OFF	WITNESS (3)	DAYS OFF
WITNESS (2)	DAYS OFF	WITNESS (4)	DAYS OFF

SCCC HEARINGS OFFICE

NARRATIVE

STATE A CONCISE DESCRIPTION OF THE DETAILS OF THE RULE VIOLATIONS, COVERING ALL ELEMENTS AND ANSWERING THE QUESTIONS OF WHEN? WHERE? WHO? WHAT? WHY? AND HOW?, DESCRIBE ANY INJURIES, PROPERTY DAMAGE, USE OF FORCE, ETC., ATTACH ALL RELATED REPORTS.

On 04/01/2009 at approximately 2:00 PM, offender McKee, Jeffrey DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last sentence it reads "If you can't make either, let me know so I can file an emergency grievance. Thank you." The copies were not made at that time. His copies were made the next morning Tuesday 04/02/09, and were completed on time. Copies in the H-3 unit are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was provided and the copies were made. I was being threatened by offender McKee by the grievance system if the copies were not made.

REPORTING STAFF NAME (LAST, FIRST) CUS Dennis Cherry	SHIFT 2 <sup>nd</sup> Shift	DAYS OFF Sat/Sun
EVIDENCE TAKEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE CASE NUMBER	EVIDENCE LOCKER NUMBER
DISPOSITION OF EVIDENCE (IF NOT PLACED IN LOCKER) Attached to this infraction	PLACED IN PRE-HEARING CONFINEMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	PHOTO SUBMITTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT		
LAST, FIRST 1)	Staff <input type="checkbox"/> Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
LAST, FIRST 2)	Staff <input type="checkbox"/> Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
RELATED REPORTS ATTACHED	<input type="checkbox"/> SUPPLEMENTAL <input type="checkbox"/> STAFF WITNESS STATEMENTS <input type="checkbox"/> TELE-INCIDENT <input checked="" type="checkbox"/> OTHER (SPECIFY) Kite provided	<input type="checkbox"/> BACKGROUND MEMOS <input type="checkbox"/> MEDICAL <input type="checkbox"/> USE OF FORCE

387 34

REPORTING STAFF SIGNATURE C/S D. [Signature]	DATE 4/07/09
INFRACTION REVIEW OFFICER SIGNATURE Kasia [Signature]	DATE 4-8-09

(388) (35)  
(89)



STATE OF WASHINGTON  
DEPARTMENT OF  
CORRECTIONS

OFFENDER'S KITE  
PAPELETA DE PETICION DEL RECLUSO

36  
90  
689  
(10)

OFFENDER NAME (PRINT) / NOMBRE DEL RECLUSO (LETRA DE MOLDE) <i>Jeffrey R. McKee</i>		
DOC NUMBER / NUMERO DOC <i>853819</i>	UNIT, CELL / UNIDAD, CELLA <i>H-3-A264</i>	DATE / FECHA <i>4/11/09</i>
DESIRE / INTERVIEW WITH OR ANSWER FROM / DESFA ENTREVISTA CON O RESPUESTA DE <i>CUS Charly</i>		

Interpreter needed for \_\_\_\_\_ (language)  
Necesito intérprete para \_\_\_\_\_ (idioma).

REASON/QUESTION / RAZON/PREGUNTA

*AS you can advise you served me papers for a violation ON 4/3/09 and as you can advise my Reply is due in the mail before 12:00 and 4/2/09. Please let me know if you want to make the copies today or tomorrow before 12:00. If you can't make either let me know so I can file an emergency.*

SIGNATURE FIRMA: *[Signature]* DAYS OFF/DIAS LIBRES: \_\_\_\_\_

RESPONSE / RESPUESTA: *Unfortunatly I cannot*

*Thank you. I will send this threat of a grievance out with all my other files*

RESPONDER/PERSONA QUE RESPONDE: *CUS D. S.* DATE/FECHA: *4/11/09*

Distribution: WHITE-YELLOW-Responder, YELLOW-Return to Offender with Response, PINK-Offender keeps  
Distribucion: BLANCO-AMARILLA Persona que responde, AMARILLA-Devuelto al recluso con respuesta, ROSA Se lo queda al recluso



WITNESS STATEMENT

Name of Witness <b>DAHNE</b>	DOC Number <b>STAFF</b>	Facility <b>SCCC</b>
Position/Title of Witness <b>STAFF</b>		

NAME OF OFFENDER(S) TO WHICH STATEMENT REFERS	DOC NUMBER
MCKEE, JEFFREY (H3026U)	882819

OFFENDER DESIRES WRITTEN STATEMENT CONCERNING THE FOLLOWING

663 - Using physical force, intimidation or coercion against any person

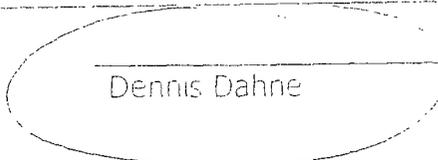
Name of Person Obtaining Statement <i>A. Williams</i>	Date <i>4/14/09</i>	Time <i>12:00</i> <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
--	------------------------	---

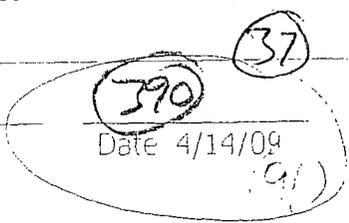
NOTE: This statement should give a factual account of the events witnessed. Of particular importance is information as to what was observed, where and when it occurred, who was involved, what other witnesses there were to the event, and if possible, any factual information relative to the possible reasons for the incident or misconduct.

STATEMENT (Use back of this page if additional space is required.)

I am the grievance coordinator and would have been contacted to make the determination of rather his complaint was Emergent or riot, but I was not present and was not a witness to the infraction incident.

I have read the above statement and affirm that it is based on personal observation of the event(s) described herein and that it is, to the best of my knowledge, a true and accurate statement of fact.





PROCEED WITNESS QUESTIONS  
GRIEVANCE COORDINATOR DENNIS DAHNE

INFRACTION GROUP #10

WAC 137-25 (663)

TO: Dennis Dahne Grievance Coordinator

1) What does the Offender Grievance Program Manual (OGP) state in regards to inmates attempting informal resolution before filing a grievance?

2) What does OGP state in regards to retaliation or reprisal against inmates using the grievance system?

3) Can an inmate be infraacted for stating that he will have to file a emergency grievance if staff cannot perform a specific duty?

Dennis Dahne Grievance Coordinator  
191 Constatline Way  
Aberdeen, Wa 98520  
(360) 537-1800

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STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

OFFENDER COMPLAINT

CHECK ONE:  INITIAL GRIEVANCE,  EMERGENCY GRIEVANCE,  APPEAL TO NEXT LEVEL

RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.

NAME LAST <u>McKee</u>	FIRST <u>Jeffrey</u>	MIDDLE <u>R</u>	DOC NUMBER <u>882519</u>
PROGRAM ASSIGNMENT	WORK HOURS	FACILITY/OFFICE <u>SCC</u>	UNIT/CELL <u>H3-A264</u>

COMMUNITY SUPERVISION: Send all completed copies of this form directly to Grievance Program Specialist, Offender Grievance Program, Department of Corrections, P.O. Box 4126, Olympia WA 98504-1126

MAILING ADDRESS	STREET OR P.O. BOX	CITY, STATE	ZIP CODE	TELEPHONE NUMBER
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I WANT TO GRIEVE: CC Wilson Taylor and CUS Cherry have based on notice that I had a deadline to file this today where I want to have my copies made of Taylor and CUS Cherry Petition if I did not want my originals with CBS with out of my e-mail account number. CBS has already lost or stolen my originals file a last Thursday and has a history of stealing inmates legal documents. See Grievance #0903476, 0903166, 0903165, 0903171. This issue was supposed to have been resolved to Grievance #0518276 that was filed on 5/11/08 but I am still awaiting the court response as of this date. CUS Cherry has stated to me that I could sue him. Appropriate measures litigation.

SUGGESTED REMEDY

- 1) Immediately make my copies so I can meet the court imposed deadline
- 2) Retain CUS Cherry as his duties to follow DOC Policy and not incur any special litigation

MANDATORY [Signature] 3/31/09 11:00 AM  
SIGNATURE DATE

GRIEVANCE COORDINATOR'S RESPONSE

LOCATION CODE <u>SCC</u>	DATE RECEIVED <u>3/31/09</u>
-----------------------------	---------------------------------

Your complaint is being returned because:

- It is not a grievable issue
- You requested to withdraw the complaint.
- You failed to respond to callout sheet on \_\_\_\_\_
- The formal grievance/appeal paperwork is being prepared

- The complaint was resolved informally
- Additional information and/or rewriting is needed  
(See below) Return within five (5) days or by  
Due Date \_\_\_\_\_  
 No rewrite received. Date \_\_\_\_\_

EXPLANATION: Grievance Coordinator Dennis Dehne was contacted and state to file this through the normal channels.

Very consistent CC Wilson Taylor 3/31/09

INITIAL COMPLAINT OBJS INFORMATION						DATE OF RESPONSE	COORDINATOR SIGNATURE
TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION		
01	02	803	487	10	10	3/31/09	<u>[Signature]</u>



SERIOUS INFRACTION REPORT

Institution: SCCC

Infraction Group Number 11

STAFF REPORT

Name: MCKEE, Jeffrey R.

DOC # 882819

Date: 4/7/2009

Number of rule(s) violated

Time 1400

663 - STRONGARMING/INTIMIDATION

Place: Staff office

Details in full: On 04/03/09, at approximately 2:00PM, offender McKee DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last paragraph it reads "See attached Emergency Grievance, which I will not need to submit if the cert and copies are provided." The copies were not made. Copies in the H-3 unit are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was not provided. I was being threatened by offender McKee by the grievance system if the copies were not made. I believe he did file an emergency grievance and it was deemed non-emergent.

Witnesses

DENNIS W. CHERRY

Reporting Staff (Print)

Reporting Staff Signature

FACT FINDING DURING HEARING

Was offender informed of right to remain silent?  Yes  No

Date of Hearing: 4/20/2009

PLEA: NOT GUILTY: 663

GUILTY:

Did the offender make statement after being informed of his/her rights?  Yes  No

If so, what? I had an emergent need for documents. I attached the kite asking for a decision so I could file a grievance per policy

DECISION

Finding: NOT GUILTY: 663

DISMISSED

GUILTY:

REDUCED

Facts and evidence found:

Sanction(s): NONE

Reason for sanction(s)

Recommendations (Non-Sanction):

D. Cherry  
Hearings Officer

[Signature]  
Superintendent

394 41



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

FORM D

DISCIPLINARY HEARING MINUTES AND FINDINGS

Infraction Group Number: 11

Offender Name (Last, First) MCKEE, Jeffrey R			DOC Number 882819	
Date of Hearing 4-20-09	Time of Hearing 1323	Infraction Date 4/7/2009	Waived 24 Hour Notice <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Waived Appearance <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

OFFENDER'S PLEA: Guilty

Not Guilty 663

INTERPRETER:  Yes  No Name: \_\_\_\_\_

STAFF ADVISOR:  Yes  No Name: \_\_\_\_\_

COMPETENCY CONCERN:  Yes  No HEARING IMPAIRED:  Yes  No

WITNESS STATEMENT RETURNED:  Yes  No

WITNESS STATEMENT DENIED:  Yes  No

REASON: WAS CHECKED IN BY TRANSPORTATION STAFF

SUMMARY OF TESTIMONY (LIST WITNESSES TESTIFYING, EVIDENCE USED / FINDINGS / REASONS FOR CONTINUANCES DECISIONS AND SANCTIONS/ANY RELEVANT INFORMATION):

I HAD AN EMERGENCY HEARD FOR DOCUMENTS. I  
ASTAIND ~~THE~~ THE VTR ASKING FOR A DECISION  
SO I COULD FILE A GUARANTEE PER POLICY

LIST EACH WAC 137-28 RULE VIOLATION SEPARATELY:

INFRACTION NO.	FINDING		FINDING DISMISSED	FINDING REDUCED	REASON
	GUILTY	NOT GUILTY			
663		X			WRITTEN TESTIMONY OF STAFF AND OFFENDER'S TESTIMONY

SANCTION(S): None

REASON FOR SANCTION(S):

RECOMMENDATIONS (Non-Sanction):

I HAVE RECEIVED A COPY OF THIS FORM

Offender or Staff Witness Signature: Date: 4/20/09 Time: 13:30

Hearing Officer Signature: Date: 4-20-09 Time: 1335

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 06-03, RCW 42-56, and RCW 40-14.

395 (42)



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

FORM C

H30264

# DISCIPLINARY HEARING NOTICE/APPEARANCE WAIVER

Infraction Group Number 11

Offender Name MCKEE, Jeffrey R.	DOC Inmate Number 882819	Facility SCCC	Date 4/10/2009
Type of Review	Hearing Scheduled For Date	Location	Time
<input checked="" type="checkbox"/> Disciplinary			

REASON FOR HEARING (Include all Allegations of Misconduct, if Appropriate)

663 - Using physical force, intimidation or coercion against any person.

I HAVE BEEN PROVIDED A CERTIFIED SIGN LANGUAGE INTERPRETER  
 I HAVE BEEN PROVIDED WITH A SPANISH TRANSLATION OF THE CHARGES AGAINST ME OR  
 SE ME HA DADO UNA TRADUCCION AL ESPAÑOL DE LOS CARGOS EN MI CONTRA EL DIA

Interpreter: Name/Date \_\_\_\_\_ AT \_\_\_\_\_ Time/HORA \_\_\_\_\_  
 Offender: Signature/Firma de Ofensor \_\_\_\_\_

### OFFENDER RIGHTS:

- YOU HAVE THE RIGHT TO REMAIN SILENT AT THE HEARING. IF YOU CHOOSE TO REMAIN SILENT, YOUR SILENCE MAY BE USED AGAINST YOU AND THE DECISION WILL BE BASED ON THE EVIDENCE PRESENTED
- YOU MAY WAIVE YOUR APPEARANCE AT THE HEARING
- YOU DO NOT HAVE A RIGHT TO CROSS EXAMINE WITNESSES, HAVE THE INFRACTING STAFF PRESENT AT THE HEARING, OR HAVE A POLYGRAPH OR OTHER SUPPLEMENTAL TEST
- YOU MAY REQUEST WITNESS STATEMENTS AND/OR THAT STAFF, OFFENDERS, OR OTHER PERSONS BE PRESENT AS WITNESSES, UNLESS IT IS DETERMINED BY THE HEARING OFFICER THAT DOING SO WOULD BE UNDULY HAZARDOUS TO FACILITY SAFETY OR SECURITY. (List Witnesses Below)

STAFF NAME	STATEMENT	WITNESS	POSITION	OFFENDER NAME	STATEMENT	WITNESS	DOC NUMBER
<del>Cus cherry</del>	<del>Witness</del>	<del>Infraction</del>	<del>4/14/09</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>
<del>Dohne</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>	<del>_____</del>

CRIMINAL CHARGES MAY BE PENDING ANYTHING YOU SAY HENCEFORTH MAY BE USED AGAINST YOU IN A COURT OF LAW

STATUS OF CRIMINAL CHARGES  NONE  UNKNOWN  PENDING IN \_\_\_\_\_ COUNTY \_\_\_\_\_ CHARGES \_\_\_\_\_

YOU HAVE THE RIGHT TO REVIEW ALL RELATED REPORTS AND A SUMMARY OF ANY CONFIDENTIAL INFORMATION  
 REQUESTED  WAIVED

YOU MAY REQUEST A STAFF ADVISOR  
 REQUESTED  WAIVED

YOU MAY REQUEST AN INTERPRETER (If unable to speak, and/or understand the English language)  
 REQUESTED  WAIVED

YOU MAY REQUEST A CERTIFIED SIGN LANGUAGE INTERPRETER IF YOU ARE HEARING IMPAIRED  
 REQUESTED  WAIVED

YOU MAY APPEAL THE DECISION AND/OR SANCTIONS TO THE SUPERINTENDENT/FACILITY SUPERVISOR.  
 IF YOU ARE AN INDETERMINATE SENTENCE CASE AND WITHIN 60 DAYS OF AN ESTABLISHED RELEASE DATE, A GUILTY FINDING COULD RESULT IN THE CANCELLATION OF YOUR RELEASE DATE

I, DOC # \_\_\_\_\_, WAIVE MY RIGHT TO THE REQUIRED 24 HOURS NOTICE PRIOR TO BEING SEEN BY THE (DISCIPLINARY) HEARING OFFICER AND AUTHORIZE THE HEARING OFFICER TO MAKE A DISPOSITION REGARDING THE INFORMATION AND EVIDENCE PRESENTED TO THE HEARING OFFICER AS PERTAINS TO MY PARTICULAR SITUATION

I, DOC # \_\_\_\_\_, WAIVE MY RIGHT TO ATTEND THIS SCHEDULED HEARING  
 UNDERSTANDING THAT THE HEARING WILL BE HELD IN MY ABSENCE

COPY OF THIS FORM AND INFRACTION, WITH ATTACHMENTS, RECEIVED.

X [Signature] 4/14/09 10:30  
 Offender/Witness Signature Date Time

Clo [Signature] 4/14/09 0925  
 Staff Signature Date Time

43  
 396  
 197



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

FORM A

INITIAL SERIOUS INFRACTION REPORT

DATE OF INFRACTION 04/07/2009	OFFENDER NAME (LAST, FIRST) Mckee, Jeffrey	DOC NUMBER 882819	HOUSING ASSIGNMENT H3-A26U
RULE VIOLATION #(S) 653			
TIME OCCURRED Approximately 2 PM	PLACE OF INCIDENT (BE SPECIFIC) CUS Office in the H-3 living unit	RECEIVED 2 APR 10 2009	DATE OCCURRED 04/03/09
WITNESS (1)	DAYS OFF	WITNESS (3) SOCC HEARER - CUS OFFICE	DAYS OFF
WITNESS (2)	DAYS OFF	WITNESS (4)	DAYS OFF

NARRATIVE

STATE A CONCISE DESCRIPTION OF THE DETAILS OF THE RULE VIOLATIONS, COVERING ALL ELEMENTS AND ANSWERING THE QUESTIONS OF WHEN? WHERE? WHO? WHAT? WHY? AND HOW? DESCRIBE ANY INJURIES, PROPERTY DAMAGE, USE OF FORCE, ETC., ATTACH ALL RELATED REPORTS

On 04/03/2009, at approximately 2:00 PM, offender Mckee, Jeffrey DOC #882819 came into the CUS office in the H-3 unit wanting legal copies made. He presented a kite to me and on the kite in the last paragraph it reads, "See attached Emergency Grievance which I will not need to submit if the cert and copies are provided." The copies were not made. Copies in the H-3 unit are made on Tuesday's and Thursday's unless the offender can show proof to it being emergent. This proof was not provided. I was being threatened by offender McKee by the grievance system if the copies were not made. I believe he did file an emergency grievance and it was deemed non emergent.

REPORTING STAFF NAME (LAST, FIRST) CUS Dennis Cherry	SHIFT 2 <sup>nd</sup> Shift	DAYS OFF Sat/Sun
EVIDENCE TAKEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE CASE NUMBER	EVIDENCE LOCKER NUMBER
DISPOSITION OF EVIDENCE (IF NOT PLACED IN LOCKER) Attached to this infraction		PHOTO SUBMITTED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
PLACED IN PRE-HEARING CONFINEMENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT		
LAST, FIRST 1)	Staff <input type="checkbox"/> Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
LAST, FIRST 2)	Staff <input type="checkbox"/> Volunteer/Visitor/Other <input type="checkbox"/>	Inmate <input type="checkbox"/> DOC#
RELATED REPORTS ATTACHED:	<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> BACKGROUND MEMOS
	<input type="checkbox"/> STAFF WITNESS STATEMENTS	<input type="checkbox"/> MEDICAL
	<input type="checkbox"/> TELE-INCIDENT	<input type="checkbox"/> USE OF FORCE
	<input checked="" type="checkbox"/> OTHER (SPECIFY) Kite provided	

397 44

FR

REPORTING STAFF SIGNATURE	DATE
<i>A.S.D. [Signature]</i>	4/7/09
INFRACTION REVIEW OFFICER SIGNATURE	DATE
<i>[Signature]</i>	4/8/09

865

THIS NUMBER IS CONSOLIDATED UNDER THE INFRACTION AIR WITH AN INCREASE IN THE CONSOLIDATION



STATE OF WASHINGTON  
DEPARTMENT OF  
CORRECTIONS

665  
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10/1

OFFENDER'S KITE

PAPELETA DE PETICION DEL RECLUSO

OFFENDER NAME (PRINT) / NOMBRE DEL RECLUSO (LETRA DE IMPRIMERIA)		
Jeffrey R. Wilke		
DOC NUMBER / NUMERO DOC	UNIT, CELL / UNIDAD, CELDA	DATE / FECHA
882819	H3-17260	4/3/09
DESIRE INTERVIEW WITH / OR ANSWER FROM / DESEO ENTREVISTA CON / O RESPUESTA DE		
CIS CHARLIE		

Interpreter needed for \_\_\_\_\_ (language)  
 Necesito interprete para \_\_\_\_\_ (idioma)

REASON/QUESTION  
RAZON/PREGUNTA

C. Taylor has been unavailable all week. I require a certified copy of records account for past (within 2) copies of my inductive Relief Petition that due to the confiscation of my typewriter I have been unable to file until today as you know I have numerous court dates and require the above request be completed today in ~~addition~~ addition this petition

SIGNATURE/HIRMA \_\_\_\_\_ DATE / FECHA LIBRES \_\_\_\_\_

RESPONSE  
RESPUESTA

Requests the return of my constitutionally protected rights but all have been reviewed. SEE ATTACHED EMERGENCY GRIEVANCE WHICH I WILL NOT NEED TO SUBMIT IF THE CELL AND COPIES ARE PROVIDED. I will see who and put it with my other threatening info I have received.

RESPONDER/PERSONA QUE RESPONDE \_\_\_\_\_ DATE/FECHA \_\_\_\_\_  
 CIS D. E. 4/3/09



WITNESS STATEMENT

Name of Witness <b>DAHNE</b>	DOC Number <b>STAFF</b>	Facility <b>SCCC</b>
Position/Title of Witness <b>STAFF</b>		

NAME OF OFFENDER(S) TO WHICH STATEMENT REFERS	DOC NUMBER
MCKEE, JEFFREY (H3026U)	882819

OFFENDER DESIRES WRITTEN STATEMENT CONCERNING THE FOLLOWING

**663 - Using physical force, intimidation or coercion against any person**

---



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Name of Person Obtaining Statement: <b>A. Williams</b>	Date: <b>4/14/09</b>	Time: <b>1300</b> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
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NOTE: This statement should give a factual account of the events witnessed. Of particular importance is information as to what was observed, where and when it occurred, who was involved, what other witnesses there were to the event, and if possible, any factual information relative to the possible reasons for the incident or misconduct.

STATEMENT (Use back of this page if additional space is required.)

I would have been contacted to determine rather the grievance was emergent or not, but I was not present and did not witness the incident surrounding the infraction

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I have read the above statement and affirm that it is based on personal observation of the event(s) described herein and that it is, to the best of my knowledge, a true and accurate statement of fact.

\_\_\_\_\_  
Dennis Dahne

**(400)** **(47)**  
Date 4/14/09

PROPOSED WITNESS QUESTIONS  
CUS DENNIS OHEFFY

Infraction Group #11  
M40 137-25-020 (663)

TO: CUS DENNIS OHEFFY

1) Describe the document Mr. McKee brought to you that he was attempting to have copied?

2) What did you base your decision on that the documents Mr. McKee had presented were not emergent and not necessary to be copied?

3) Did you process the emergency grievance Mr. McKee filed regarding this incident?

4) Describe how you felt threatened by the file from Mr. McKee?

5) Describe how you were personally affected by the emergency grievance Mr. McKee filed regarding this issue?

6) Did you process an emergency grievance for Mr. McKee related to this file?

7) What did you base your decision on that the documents Mr. McKee presented were not emergent and did not need to be copied on that date?

CUS Dennis Oheffy  
191 Constance Way  
Aberdeen, Wa 98520  
(PH) (360) 537-1800

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Dennis Dahne Grievance Coordinator  
191 Constanlen Way  
Aberdeen, Wv 98520  
(360) 537-1800

6) On what basis did you determine that the legal documents Mr. McKee presented did not require to be copied on that specific day?

5) On 7/3/09 did GUS Dennis Cherry contact you about an emergency grievance filed by Mr. McKee? If so what was decision of that grievance?

4) What is the requirements of staff when an inmate presents an emergency grievance?

3) Can an inmate be instructed for stating that he will have to file a emergency grievance if a staff cannot perform a certain duty?

2) What does GCP state in regards to retaliation or reprisals against inmates using the grievance system?

1) What does the Offender Grievance Program Manual (GCP) state in regards to inmates attempting informal resolutions before filing a grievance?

TO: Grievance Coordinator Dennis Dahne

WAC 137-25-030 (663)

INFRACTION GROUP # 11

PROPOSED WITNESS QUESTIONS  
GRIEVANCE COORDINATOR DENNIS DAHNE

APPENDIX I

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APPENDIX

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EXPEDITE  
NO HEARING SET  
X HEARING IS SET FOR:  
Date: March 26, 2010  
Time: 1:30 pm  
Judge: Richard D. Hicks  
Location: (Telephonic)

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY

JEFFREY R. MCKEE, ) No. 08-2-00338-5  
Plaintiff, )  
 ) DECLARATION OF JEFFREY R. MCKEE  
v. ) IN SUPPORT OF MOTION TO  
 ) SHIP REMAINING PROPERTY  
KEM MADISON, et. al., )  
Defendant(s). )

I, Jeffrey R. McKee, declare and say:

1. I am over the age of eighteen (18) and competent to testify to the facts contained herein.
2. I am the plaintiff in the above entitled matter proceeding pro se.
3. On 1/15/10, this court orally ruled that defendants shall send the files in this case in no more than two boxes pursuant to Washington State Department of Corrections (WDOC) policy. Attached and incorporated as Exhibit 1, is a true copy of the 1/15/10, Verbatim Report of Proceedings
4. Pursuant to that ruling, on 2/01/10, Stafford Creek Corrections Center (SCCC) Property Sergeant Abram Clark sent two boxes of my property. Attached and incorporated as Exhibit 2, is a true copy of the 2/02/10 Declaration of SCCC Property Sergeant Clark.
5. I received these two boxes of property on 2/18/10. Upon inventorying the contents of these two boxes I identified what amounted to be a one inch thick pile of motions related to this case.

//

Jeffrey R. McKee 812819, pro se  
Airway Heights Corrections Center  
PO BOX 2079 KA  
Airway Heights, Wa 99001  
(509) 244-6700

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2 Most of the discovery in this case was missing. I also found that my  
3 personal notes and documentary evidence I have been compiling to support a  
4 cross-motion for summary judgment was also missing.

5 6. Since my transfer from SCCC, I have written several letters to the  
6 Superintendent and the Property Sergeants at SCCC, requesting information  
7 on my property. The majority of these letters have not been responded to.  
8 The few that have did not address the questions and requests contained in  
9 the letters.

10 7. On 9/09/09, SCC Superintendent Pat Glebe, agreed to send all my  
11 property that is held at SCCC. Attached and incorporated as EXHIBIT 3, is  
12 a true copy of the 9/09/09 letter from Glebe to McKee.

13 8. On 9/17/09, I was hand served a "follow-up" letter from SCCC  
14 Superintendent Glebe, retracting his previous offer to ship my property.  
15 Mr. Glebe stated that his previous offer to ship my property was "in error  
16 and against Department of Corrections policy regarding shipping of offender  
17 property". Attached and incorporated as Exhibit 4, is a true copy of the  
18 9/17/09, letter from Glebe to McKee.

19 9. This response was confusing because WDOC policy 440.020 I(B)(1)(a)  
20 gives the Superintendent the discretion to ship additional boxes of  
21 property. Attached and incorporated as Exhibit 5, is a true copy of Page 2  
22 of WDOC policy 440.020.

23 10. I again wrote directly to SCCC Superintendent Pat Glebe,  
24 requesting he answer several questions regarding my property and the lack  
25 of responses to my previous letters and grievances.

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In this letter I again asked how much it would cost to ship just the legal files in my criminal case (page 3 @7). Attached and incorporated as Exhibit 6, is a true copy of the 1/11/10, letter from McKee to Glebe.

11. On 2/02/10, SCCC Superintendent Glebe responded, by letter, that the State Attorney Generals office informed SCCC to "hold all of your personal property until further notice, unless we receive funds to ship it to your location". Attached and incorporated as Exhibit 7, is a true copy of the 2/02/10 letter from Glebe to McKee.

12. Todate, I have spent and/or incurred a debt of over \$300.00 dollars in attempting to resolve my property issue.

I declare under penalty of perjury under the laws of Washington State that the forgoing is true and correct to the best of my knowledge.

DATED this 5th day of March, 2010.

  
Jeffrey R. McKee, declarant pro se

Jeffrey R. McKee 882819, pro se  
Airway heights Corrections Center  
PO BOX 2029 KA  
Airway Heights, WA 99001  
(509) 244-6700

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EXHIBIT 2

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EXHIBIT

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STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

JEFFREY R. MCKEE,

Plaintiff,

v.

WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS  
(WDOC), et al.,

Defendants.

NO. 08-2-00386-5

DECLARATION OF ABRAM  
CLARK

I, ABRAM CLARK, make the following declaration:

1. I am a property room sergeant at Stafford Creek Corrections Center.
2. I am familiar with the property of Inmate Jeffrey McKee, DOC #882819.
3. On January 29, 2010, I personally gathered the current legal materials regarding

*McKee v. Madison, et al.*, Thurston County Cause No. 08-2-00338-5. These materials were included in two boxes. There were also additional legal materials in these two boxes. In accordance with the order from the Court, my understanding was that this material was to be shipped by February 5, 2010. I had the property sent to Mr. McKee at Airway Heights Corrections Center on February 1, 2010. I expect that the legal materials will arrive at Airway Heights Corrections Center by February 5, 2010, as ordered by the Court.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 2<sup>nd</sup> day of February, 2010, at Aberdeen, Washington.

  
\_\_\_\_\_  
ABRAM CLARK

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EXHIBIT 2

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EXHIBIT

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EXHIBIT



STATE OF WASHINGTON  
 DEPARTMENT OF CORRECTIONS  
 OFFICE OF CORRECTIONAL OPERATIONS  
 STAFFORD CREEK CORRECTIONS CENTER

191 Constantine Way • MS: WA-39 • Aberdeen, Washington 98520 • (360) 537-1800  
 FAX: (360) 537-1807

September 9, 2009

Mr. Jeffrey McKee, DOC #882819  
 Airway Heights Corrections Center  
 PO Box 2049, KA12U  
 Airway Heights, WA 99001-2049

Dear Mr. McKee,

I am in receipt of your letter dated June 10, 2009. In your letter you state you are concerned about us holding your property and legal work at Stafford Creek Corrections Center. I have spoken with Property Sergeant Clark regarding this issue.

Upon review of your situation this letter will be forwarded to SCCC Property Room with instruction to ship your property to you via the Offender Transport bus. However, your appliances will have to be paid for by you as they cannot go on the bus. This shipment will include all of your property being held at SCCC. I feel this will safeguard your legal work and allow you to separate it once you have received your property.

If you have any further questions regarding this matter, please contact the property Sgt. at Airway Heights Corrections Center, for they are in the best position to assist you with your needs.

Thank you for taking the time to advise me of your situation.

Sincerely,

Pat Glebe, Superintendent  
 Stafford Creek Corrections Center

PG:bt  
 SUPT 1604

cc: Property Sgt. Clark  
 Property Sgt. AHCC  
 Central File  
 File

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EXHIBIT 4

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(18)

Exhibit 4



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
OFFICE OF CORRECTIONAL OPERATIONS  
STAFFORD CREEK CORRECTIONS CENTER  
191 Constantine Way - MS WA-39 - Aberdeen, Washington 98520 - (360) 537-1800  
FAX (360) 537-1804

September 17, 2009

Jeffrey McKee, DOC No. 882819  
Airway Heights Corrections Center  
Post Office Box 1899  
Airway Heights, WA 99001-1899

RE: Property Issue at Stafford Creek Corrections Center

Mr. McKee:

This letter is a follow-up to the correspondence my office sent you on September 9, 2009. That letter is in error and is against Department of Corrections' policy regarding shipping of offender property.

I have been advised that this issue is in litigation and will be resolved by the courts. Because of this status, SCCC has been notified to hold the property until we have received outcome of the litigation.

Sincerely,

Pat Glebe  
Superintendent  
Stafford Creek Correction Center

PG:si

cc: SCCC Property Department  
File

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"Working Together for SAFE Communities"

EVIDIT 5

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Exhibit 5

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	APPLICABILITY <b>PRISON/WORK RELEASE OFFENDER/SPANISH MANUALS</b>		
	REVISION DATE 12/9/08	PAGE NUMBER 2 of 4	NUMBER DOC 440.020
	TITLE <b>TRANSPORT OF OFFENDER PROPERTY</b>		

**REFERENCES:**

DOC 100.100 is hereby incorporated into this policy. DOC 420.100 Transportation Standards; DOC 440.000 Personal Property for Offenders; DOC 440.050 State Issued Clothing/Linen; DOC 560.210 Religious Freedom for Offenders

**POLICY:**

- i. When an offender transfers from one facility to another, the Department will transport a limited amount of offender personal property and state issued items in the most cost effective and efficient manner to facilitate the transfer.

**DIRECTIVE:**

I. Department Transport Requirements

A. All offender personal property will be inventoried and secured prior to transfer. Only authorized property will be transported/mailed/shipped to other Department facilities.

B. The offender's authorized personal property items will be transported at Department expense in no more than 2 shipping boxes that do not exceed 25 pounds per box, and are 10"x12"x18".

1. The following items must be shipped as part of the 2 box limit:

a. Legal documents/papers needed to meet a court imposed deadline. If these documents/papers exceed the 2 box limit, the Superintendent/Community Corrections Supervisor may authorize Department transportation of additional boxes.

b. The sacred items box containing religious sacred items

c. A valuables envelope containing the offender's social security card. The envelope will be placed in the offender's property room file at the receiving facility.

2. Any remaining space in the 2 allowed boxes may be used to ship other authorized personal property items not excluded from transport per DOC 440.000 Personal Property for Offenders at Department expense.

a. Authorized health care appliances and other assistive devices (e.g., shoes, braces, supports, etc.) will be transported along with the offender, but will not be included as part of the 2 box limit.

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EXHIBIT

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EXHIBIT 6

Jeffrey R. McKee  
WDOC 882819  
Airway Heights Corrections Center  
PO BOX 2049 KA24  
Airway Heights, WA 99001

January 11, 2010

Pat Glebe, Superintendent  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

RE: PERSONAL PROPERTY

Dear Superintendent Glebe,

On 4/04/09 I was transferred from the Segregation Unit of your institution to Airway Heights Corrections Center (AHCC). This transfer was because I was found not guilty of two 663 infractions I received from CUS Dennis Cherry. CUS Cherry wrote these infractions because I filed two grievance to obtain legal copies.

When I was transferred, then Property Sergeant Kevin Swope provided me with 16 pages of RECORD OF OFFENDER PROPERTY (DOC 05-062). 14 of these identified the contents being "misc paperwork". One page identified the following items; 1 Radio, 1 Headphone, 1 Typewriter & Accessories, 1 Ext Cord/Power Strip, 2 Nail Clippers Large, 1 Pitcher and "Misc Toiletries". The last page of Offender Property identifies; 3 Undershirts, 1 Shower shoes, 1 Sketchers shoes, 2 Faded Glory Blue Shirts. All Property Forms were not signed but dated 4/22/09 the day after I was segregated. Accordingly this is 16 boxes of my personal property. Sergeant Swope provided my with a notice, date 5/04/09 that it would cost \$210.00 to ship this property.

According to the Declaration of Risa Klemme there was two boxes of property sent with me on the chain bus. These two boxes contained 1 pair of shoes and two infraction hearing CD's. It is not clear which item was in which box (See Declaration of Risa Klemme in Thurston County Superior Court Cause No. 08-2-00386-5).

I submitted a letter with an attached Postage Transfer to SCCC Property Sergeant Abram Clark on 9/23/09, requesting my personal clothing be sent at WDOC expense pursuant to WDOC Policy to my friends. This letter was never responded to.

Prior to my transfer I had notified you and your staff of my several court imposed deadlines in my criminal and civil cases. I also notified you by letter dated 5/11/09 and 6/10/09 of my several court imposed deadlines and requested you send me my legal files pursuant to WDOC Policy 440.020(I)(E)(3)(a)(1). You responded to the 6/10/09 letter only and agreed to send my property on the chain bus.

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On 9/17/09 you had me personally served a letter retracting your previous letter stating that your prior "letter was in error and is against Department of Corrections policy regarding shipping of offender property".

I submitted a institution check to your property department with a letter specifically requesting they send only my TV, Typewriter and Radio. These items were sent at a cost of \$18.98. As of todays date the left over \$16.02 has not been returned to my postage account.

On 12/17/09 I was called to AHCC Property and was given the following items of my personal property; 2 shirt Faded Glory, 2 Kirkland jeans, 3 undershirts, 1 Sketchers shoes, 1 Head phone, 1 Mirror, 2 Nail Clippers (Big and Small), 1 Pitcher, 1 Power Cord, 1 Soap Dish, 1 Toothbrush Holder, 1 Sewing Kit, 1 CD Case, 1 peace of candy, 1 EMPTY coffee jar, 1 Radio Cord, 10 Tapes, 9 CD's with cases, 1 EMPTY bottle of shampoo, 1 almost EMPTY bottle of shampoo, 1 Tooth past, 2 dental floss, 1 Ruler, 1 Vasaline, 1 Moisturizing cream, 1 Tweezers, 1 broken plastic knife, 1 broken plastic spoon, 1 Lamp, 4 Hangers, 1 Print Ribbine, 10 Ink Pens. I am not clear as to who or why these items were sent.

I have lost my first appeal in my criminal case because I did not have my legal files to raise any issue. I have lost three civil cases because I did not have my legal files.

I have filed three grievances requesting the three letters to you, Sergeant Swoop & Sergeant Clark be responded to pursuant to WDOC Policy 110.300 (I)(A)(3) (See grievance No. 0917692, 0917694 & 10/28/09 unanswered grievance). These grievances have for the most part gone unanswered.

Would you please answer the following questions I have regarding this issue as I am confused and so is my counselor here at AHCC.

- 1) Who packed and inventoried my property on 4/22/09? The inventory sheets were not signed.
- 2) Who made the decision to ship 1 pair of shoes and 2 infraction hearing CD's in place of the two chain boxes and were these in fact shipped in two boxes?
- 3) WDOC Policy 440.020(I)(B)(1)(a) states that "legal documents/papers needed to meet a court imposed deadline" are to be shipped in the two chain boxes and that "the Superintendent/Community Corrections Supervisor may authorize Department transport of additional boxes". I had a court imposed deadline in my criminal appeal and several other civil cases. Why was I not afford the benefit of having my legal files sent with me on the transport bus?
- 4) In your 9/17/09 letter you stated your 9/09/09 letter directing the shipping of my property on the offender transport bus was "against Department of Corrections' policy regarding shipping offender property". What specific ~~section of the policy were you referring to and how does it apply to my~~ situation?

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- 5) Who sent the Items not listed on my Record of Offender Property that I receive on 12/17/09 at AHCC (ie tape, CD's, ruler, empty coffee jar).
- 6) Where did the items not listed on the Record of Offender Property come from (ie. a 17th box)?
- 7) How much would it cost to ship just my legal files in my criminal case?
- 8) Why was my personal clothing not sent to my friends as requested in my 9/23/09 letter to SCCC Property Sergeant Clark?
- 9) When will the \$16.02 over payment for my appliances be refunded to my postage account?
- 10) Does the 14 boxes of "misc paperwork" contain only paper work, or is there actually other personal property items in these boxes?

Thank you for responding to this letter in accordance to WDOC Policy 110.300(I)(A)(3) and providing me the answers to these questions so I may resolve this issue.

Sincerely,



Jeffrey R. McKee

cc. WDOC Secretary Eldon Vail  
AHCC Superintendent Maggie Miller-Stoute  
file

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EVIDIT 7

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Exhibit 7



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**OFFICE OF CORRECTIONAL OPERATIONS**  
**STAFFORD CREEK CORRECTIONS CENTER**

191 Constantine Way • MS. WA-39 • Aberdeen, Washington 98520 • (360) 537-1800  
 FAX (360) 537-1807

February 2, 2010

Jeffrey R. McKee, DOC 882819  
 Airway Heights Corrections Center  
 PO Box 2049, KA24  
 Airway Heights, WA 99001

Dear Mr. McKee:

I am in receipt of your correspondence dated January 11, 2010. You expressed concern regarding property that remains at Stafford Creek Corrections Center (SCCC). You further stated that you specifically told the property room of SCCC only to ship your TV, Typewriter and Radio. You asked several other questions regarding the remainder of your property at SCCC.

Your TV, radio, and typewriter were shipped to your location. The letter that you sent did not specifically state that these were the only items you wanted. The remaining funds were used to ship you two additional boxes of property

We have been directed by the Attorney General's Office to hold all of your property until further notice, unless we receive funds to ship it to your location. These directives will answer all of the remaining questions you may have to the extent that we are allowed to discuss them at this time

The questions you have numbered 1 through 10 in your letter are a matter of Public Disclosure. Please contact the Public Disclosure Unit at the following address:

*Department of Corrections  
 Public Disclosure Unit  
 P.O. Box 41118  
 Olympia, WA 98504*

If you have any further questions regarding this matter, please contact Property Sergeant Clark with your concerns as he is in the best position to assist you

Sincerely,

Pat Glebe, Superintendent  
 Stafford Creek Corrections Center

PG:bt  
 SUPT2131

cc: Property Sergeant Clark  
 Mailroom  
 Central File  
 File

"Working Together for SAFE Communities"

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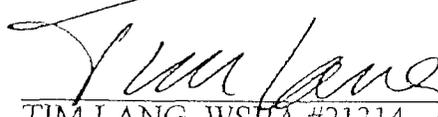
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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED this 31<sup>st</sup> day of March, 2010, in Olympia, Washington.

  
TIM LANG, WSBA #21314  
Sr. Assistant Attorney General

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**ATTACHMENT A**

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STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

JEFFREY R. MCKEE,  
  
Plaintiff,  
  
v.  
  
WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS  
(WDOC), et al.,  
  
Defendants.

NO. 08-2-00386-5  
  
DECLARATION OF RISA KLEMME

I, RISA KLEMME, make the following declaration:

1. I am the Legal Liaison Officer for the Airway Heights Corrections Center (AHCC) and have held that position with the Washington State Department of Corrections (DOC) for five years.

2. As the Legal Liaison Officer at AHCC, one of my job duties is to retrieve and/or maintain records kept by the facility in the ordinary course of business.

3. Inmate Jeffrey McKee, DOC #882819, is currently incarcerated at AHCC and has been since May 6, 2009. Upon request from the Attorney General's Office I confirmed that Mr. McKee was in possession of his "chain" bag upon arrival at AHCC on May 6, 2009, and was given his two "chain" boxes on May 21, 2009. Attached to this declaration as Attachment A is a true and accurate copy of Mr. McKee's property records documenting what property was transported with him, in his "chain bag" on May 5, 2009, when he left the Washington Corrections Center. Attached to this declaration as Attachment B is a true and

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accurate copy of Mr. McKee's property records documenting that a comb, which was contained in his "chain bag", was added to his personal property matrix. Attached to this declaration as Attachment C is a true and accurate copy of Mr. McKee's property records, signed by Mr. McKee, showing that he received his two "chain" boxes and all of the property stored therein on May 21, 2009. Mr. McKee did not receive his two "chain" boxes immediately upon arrival at AHCC because he was temporarily housed in a four-man cell, where there was no room for his additional property. Upon transfer to a two-man cell, he was provided with his two boxes on May 21, 2009.

4. I have also personally verified that AHCC is not in possession of any further personal property belonging to Mr. McKee.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 1<sup>st</sup> day of December, 2009, at Airway Heights, Washington.

  
RISA KLEMME

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WASHINGTON CORRECTIONS CENTER

RECEIVING UNITS

RECORD OF OFFENDER PERSONAL PROPERTY

NAME McKee Jeffrey DOC NUMBER 882819 FROM WCC TO AHCC DATE 5/5/09

INDIGENT

QTY	ITEM	BRAND/DESCRIPTION	NEW	USED
1	Comb 5"			
1	Hair Pick			
1	Razor			
1	Shampoo			
2	Soap 1.5 oz (2)			
1	Toothbrush			
1	Toothpaste			

STATIONARY

QTY	ITEM	BRAND/DESCRIPTION	NEW	USED
2	Address Book			
	Bible			
	Dictionary			
	Envelope 9x12			
	Pen (pentel i blc 4)			
	Pencil (5) (Lower R's 2)			
	Preinked Envelopes			
	Tablet (NA)			
	Writing Paper (NA)			

JEWELRY and ELECTRONICS

ITEM	BRAND/DESCRIPTION	NEW	USED

HEALTHCARE, HAIR, DENTAL, EYES, ETC...

QTY	ITEM	BRAND/DESCRIPTION	NEW	USED
	Baby Oil			
	Biflex			
	Brush			
	Conditioner (2)			
	Deodorant (2)			
	Glasses			
	Lotion (2)			
	Nail Clippers			
	Shampoo (2)			
	Shaving Cream			
	Soap			
	Soap Dish			
	Styling Gel (2)			
	Toothbrush			
	Toothbrush Holder			
	Toothpaste			

MISCELLANEOUS

QTY	ITEM	BRAND/DESCRIPTION	NEW	USED
	Cigarettes (20) (Lower R's 0)			
	Cigars (10) (Lower R's 0)			
	Cup/Tumbler (2)			
	Misc. Paper/Letters (NA)			
	Photographs (NA)			
	Playing Cards (2)			
	Shower Shoes			
1	Medicine			
2	Orange PRN Tablets			
1	Orange Tablets			
1	Clonidine 0.1mg/0.25mg			
1	Pre-Laminated Paper			

CLOTHING

ITEM	BRAND/DESCRIPTION	NEW	USED

CONTRABAND: EXCESSIVE AUTH. PROPERTY

ITEM	BRAND/DESCRIPTION	NEW	USED

\*TR - Trash \*RE - Return to whom \*DT - donate \*BO - send out of institution

Legal Property

15 Brown file folder full of legal records  
1 Manilla file folder full of legal records  
Records/156 Envelope folder AG's Office  
Legal Records.

COMMENTS


OFFENDER [Signature] DATE 5/5/09

OFFICER [Signature] DATE 5-5-09

ALL ITEMS LIMITED TO 1 UNLESS SPECIFIED

Distribution: WHITE - Property Room Canary - Unit File Pink - Property Box/Bag Goldenrod - Offender

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-43, RCW 42.17, and RCW 40.14

05-0528U WCC (Rev. 7/08)

ATTACHMENT A

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500 146

ATTACHMENT B

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STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
**OFFICE OF CORRECTIONAL OPERATIONS**  
**STAFFORD CREEK CORRECTIONS CENTER**

191 Constantine Way • MS WA-39 • Aberdeen, Washington 98520 • (360) 537-1800  
 FAX: (360) 537-1804

March 26, 2010

RECEIVED

MAR 30 2010

ATTORNEY GENERAL'S OFFICE  
 CORRECTIONS DIVISION

Jeffrey McKee, DOC No. 882819  
 Airway Heights Corrections Center  
 Post Office Box 1899  
 Airway Heights, WA 99001-1899

RE: Property at Stafford Creek Corrections Center

Mr. McKee:

I am writing to notify you that I have authorized an exception to policy to allow the remainder of your legal materials to be shipped to you at Airway Heights Corrections Center (AHCC) via the Offender Transport vehicle. The legal materials will be shipped by Monday, March 29, 2010. The boxes will arrive at Washington Corrections Center (WCC) same date. WCC has been instructed to place them on the first available Offender Transport vehicle to AHCC.

Please understand this is a one-time exception. The purpose is to give you the opportunity to organize your materials so that, if necessary in the future, you may make appropriate decisions about which legal materials to take with you to a new facility, either in your two approved boxes or by shipment at your expense.

I trust this will resolve the pending legal motions concerning the shipment of your legal property.

Sincerely,

Pat Glebe  
 Superintendent

cc: Property Sgt. Clark  
 Tim Lang, Sr. Assistant Attorney General  
 File #

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"Working Together for SAFE Communities"

B 30

# APPENDIX

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

---

JEFFREY R. McKEE, )  
 )  
Plaintiff, )  
 ) NO. 08-2-00386-5  
vs. )  
 )  
WASHINGTON STATE DEPARTMENT )  
OF CORRECTIONS, et al, )  
 )  
Defendants. )

---

VERBATIM REPORT OF PROCEEDINGS

---

BE IT REMEMBERED that on April 30, 2010 the  
above-entitled and numbered cause came on for motion  
hearing before the HONORABLE PAULA CASEY, judge of  
Thurston County Superior Court, Olympia, Washington.

---

Cheri L. Davidson  
Official Court Reporter  
Thurston County Superior Court  
Olympia, Washington 98502  
(360)786-5569  
davidsc@co.thurston.wa.us

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A P P E A R A N C E S

For the Plaintiff: JEFFREY R. MCKEE, DOC #882819  
(Telephonically) Pro Se  
Airway Heights Corrections Center  
K/KA24U  
PO Box 2049  
Airway Heights, WA 99001-2049

For the Defendants: SARA J. OLSON  
Assistant Attorney General  
Attorney General of Washington  
Corrections Division  
PO Box 40116  
Olympia, WA 98504-0116

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APRIL 30, 2010

HONORABLE PAULA CASEY, PRESIDING

\* \* \* \* \*

THE COURT: Good morning. We are back in  
McKee versus Department of Corrections.

Is Mr. McKee on the telephone?

MR. McKEE: Good morning, Your Honor. Yes, I  
am.

THE COURT: And you can hear me sir?

MR. McKEE: Yes, very clearly.

THE COURT: And who is here for the Attorney  
General's Office?

MS. OLSEN: Sara Olson, Assistant Attorney  
General.

THE COURT: All right. This comes on your  
request for a stay, Mr. McKee.

MR. McKEE: That's correct.

THE COURT: Go ahead.

MR. McKEE: Good morning, Your Honor.

In this case the defendants do not deny that they  
were on notice of my several court-imposed deadlines in  
my criminal and civil court cases prior to me being  
transferred on March 21st, 2009. The defendants do not  
deny that I was segregated and transferred for filing a  
prison grievance. Defendants do not deny that I was

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1 shipped one pair of shoes and two hearing infraction  
2 CDs, totaling the mandatory two boxes of legal property  
3 they were required to ship with me upon my transfer.  
4 Defendants do not deny that they attempted to destroy  
5 all my legal files, including the files in this case.  
6 Defendants do not deny that after the September 2nd,  
7 2009, letter from Stafford Creek Corrections Center  
8 Superintendent Pat Glebe where he agreed to ship all of  
9 my legal files that the State Attorney General  
10 interfered and ordered the Department of Corrections not  
11 to send my legal files and that this violated the rules  
12 of professional conduct.

13 Now, defendants don't deny that there's unresolved  
14 discovery issues either. Defendants in this case now  
15 are arguing that because the second supplemental set of  
16 discovery was sent on March 10th, 2009, 11 days before I  
17 was segregated and transferred, and that I had not made  
18 a second request for a discovery conference that this  
19 Court should ignore the discovery disputes and order  
20 immediate briefing in this matter.

21 Now, specifically the defendants contend that I  
22 only made one request for a discovery conference. This  
23 is actually not true. After I finally got a chance to  
24 sort through my files, I have discovered that I made a  
25 Court Rule 26(i) discovery request five different times

1 beginning on June 18th, 2008, again on November 20th,  
2 2008, December 11th of 2008, December 29th, 2008,  
3 January 12th, 2009 -- let's see. The November 20th,  
4 2008 and December 11th and 29th, 2008 requests are  
5 actually attached to document number 48, which is  
6 plaintiffs' Court Rule 37(b) sanction --

7 THE COURT: Let me interrupt you, sir.

8 MR. McKEE: Yes.

9 THE COURT: The underlying lawsuit in this  
10 case I think is a public records request; is that right?

11 MR. McKEE: That is correct, Your Honor.

12 THE COURT: And I don't have the file in front  
13 of me today. It was not delivered to the courtroom.  
14 What is the discovery about on the public records  
15 request?

16 MR. McKEE: Well, back in 2006 I was in the  
17 private prison contracted with the Department of  
18 Corrections for the prison overcrowding issue, and I got  
19 infracted for inciting a riot and put in the segregation  
20 unit for what totaled to be about 38 days I believe. I  
21 had several continuances and a hearing and was found  
22 guilty and served my sanction, and then between me  
23 making a public records request for every record related  
24 to the segregation infraction hearing and everything  
25 else the defendant said that they couldn't locate

1 anything because I was subsequently found not guilty on  
2 appeal and therefore they didn't keep any of the  
3 records.

4 Through the time this elapsed from then to now we  
5 have found more records and more records and this case  
6 -- I just got the discovery file, so I haven't totally  
7 been able to go through it yet. But I think some of the  
8 questions is did they actually search for the records  
9 responsive? They state in the interrogatories I believe  
10 that they searched the hearing infraction files, and I  
11 put in a request for production of those files to  
12 locate; I think there's at least dispute on that.

13 THE COURT: And what are you requesting a stay  
14 of?

15 MR. McKEE: Well, originally I was requesting  
16 a stay in the pretrial conference and the -- I think  
17 it's set for trial because at that time I didn't have  
18 the --

19 THE COURT: Is this case set for trial in May?

20 MR. McKEE: Because the discovery files are a  
21 majority of the files in this case.

22 MS. OLSON: Yes, Your Honor.

23 MR. McKEE: Now I believe I have everything,  
24 but I'm still not prepared because there's unresolved  
25 discovery issues that need to be resolved before I can

1 enter a briefing. And I assume this is gonna go to show  
2 cause or summary judgment, not trial, since it is a  
3 public records case.

4 THE COURT: Okay. I am going to let Ms. Olson  
5 speak.

6 MS. OLSEN: Very briefly, Your Honor.

7 Mr. McKee's basis for a motion for his stay was so  
8 that he could have access to his legal materials. He  
9 has now had access to every single box of his materials  
10 for 15 days. He is given the opportunity to exchange  
11 materials as he sees fit and have the materials in his  
12 cell as he sees fit.

13 In light of that being the only basis for his  
14 motion for stay, I would ask that the Court deny the  
15 motion and order that any show cause motion or whatever  
16 he intends to file to resolve this lawsuit be filed  
17 immediately upon a date set by the Court.

18 THE COURT: Now, do we have some kind of a  
19 case schedule order in this matter?

20 MS. OLSEN: Yes. I believe that the trial is  
21 set for -- I'm sorry, I don't know the date off the top  
22 of my head, but I believe it's two weeks from today. I  
23 certainly understand that potentially briefing could not  
24 be done by that date, but at any point -- at any rate I  
25 would like to have this case set and resolved fairly

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quickly. It's been pending for, oh, almost two and a half years, so we're at the point now where this case should be resolved.

If Mr. McKee has outstanding discovery issues, there's certainly a manner for him to resolve those discovery issues; he has not done so. There has been no contact with Mr. McKee requesting any kind of discovery conference with me at all regarding this case. He is in possession of his materials. That was the only basis for his motion. I ask that his motion be denied and this case be reset.

If you give me just one moment I could check to verify what date we are set for trial.

THE COURT: I think I notice in the materials it is -- is it May 10th, Mr. McKee?

MS. OLSEN: May 14th actually.

THE COURT: May 14th. So I guess it is assumed that it will be decided on briefing rather than with testimony since May 14th is a day in which we don't take testimony.

MS. OLSEN: Customarily, yes, these public records cases are handled that way, yes.

THE COURT: So there has not been any motion to compel discovery in front of me. I don't know if there was one earlier filed, Mr. McKee.

1 MR. McKEE: Your Honor, previously under the  
2 Court Rule 26(i) there was a mandatory conference call,  
3 and that was upheld in *Case v. Dundom*, 115 Wn.App. at  
4 199, so I could not at the time bring any motions for  
5 discovery because, being a prisoner, I can't call the  
6 defendant's counsel. I have to have them make the call.  
7 If you look at the letters from counsel, they kept on  
8 resisting the conference call.

9 Now, there's a new case that just came out, *Amy v.*  
10 *K-Mart of Washington*, which is 153 Wn.App, which now  
11 gives the Court discretion to hear a motion, so now  
12 maybe I don't need to make a required conference call  
13 and I can just bring in the motion now without that to  
14 compel the discovery.

15 THE COURT: Well, the date for fully resolving  
16 this is scheduled for May 14th, so what is the problem  
17 here?

18 MR. McKEE: The problem is I haven't resolved  
19 discovery issues. There was never a discovery deadline  
20 entered in this --

21 THE COURT: In public records requests we  
22 usually don't enter discovery deadlines because there is  
23 usually not discovery to be done.

24 MR. McKEE: Okay. There's another case that  
25 just briefly discussed that, that some discovery can be

1 had when needed. In a case like this where the  
2 defendant is saying they don't have the records and I'm  
3 saying they do have the records and I've discovered that  
4 they do have the records, there is, I believe, some need  
5 for discovery.

6 THE COURT: Well, then it is your obligation  
7 to get a discovery schedule in place.

8 MR. McKEE: Yeah, and I've been trying to do  
9 that, and I'd like to remind the Court that for the past  
10 year I haven't had the case file in front of me, and I  
11 did diligently work to try to attempt to get that case  
12 file, and finally after a year the defendants did  
13 produce it. I've produced in my reply at least evidence  
14 the Attorney General had interfered with me getting my  
15 case file. So a lot of the --

16 THE COURT: So here is the situation: This  
17 case has been pending for a long time. It is a 2008  
18 case. If you should prevail you are entitled to  
19 penalties, so I am not inclined to grant any continuance  
20 in this matter because the penalties would continue to  
21 run. I guess there is going to be no stay.

22 MR. McKEE: Okay. Yeah, and I was actually  
23 going to -- since I finally did get the files, I was  
24 going to just ask the Court to convert the motion at  
25 their discretion as a continuance motion. I guess I

1 have the question of do I need to make a Court Rule  
2 26(i) conference with the counsel before I can file a  
3 motion for discovery or can I just go ahead and do that  
4 now?

5 THE COURT: Well, I am going to go ahead and  
6 let you file a motion for discovery without the 26(i)  
7 conference because of the difficulty of using the  
8 telephone.

9 MR. McKEE: Okay. Thank you, Your Honor. So  
10 do we have a --

11 THE COURT: But if the Attorney General calls  
12 you back in response to your motion, you must have the  
13 conference based upon her call to you. I am not going  
14 to require her to call you right now, but if you file  
15 your motion and she is prepared to do the 26(i)  
16 conference, then she will call you.

17 MR. McKEE: Okay. So I file the motion with  
18 the Court and then if she --

19 THE COURT: But the problem is, Mr. McKee, the  
20 14th is two weeks from today.

21 MR. McKEE: Yeah, yeah. Well, that's not  
22 gonna work, so I guess I just need to leave it to the  
23 discretion of the Court on how to resolve this.

24 THE COURT: Well, I have not granted the  
25 continuance and I have not granted the stay, so I am

1 assuming we are going to address the merits on May 14th.

2 MR. McKEE: Okay. So May 14th I need to file  
3 a summary judgment motion.

4 THE COURT: Well, summary judgment motions  
5 generally take 28 days, and we are certainly beyond  
6 that. I don't know what we are going to do.

7 MR. McKEE: Okay. So --

8 THE COURT: So in order to have more time, did  
9 you -- I don't even know if the Court can inquire, but  
10 did you want to waive your right to penalties for the  
11 duration of your continuance?

12 MR. McKEE: No, for the simple fact that the  
13 majority of the reason why this case has dragged on for  
14 so long was because of the defendants prolonging it.

15 THE COURT: Okay. So I am going to suggest  
16 that you need to have something filed by next Friday if  
17 we are going to have a hearing on the 14th.

18 MR. McKEE: Okay. Whether it's a discovery  
19 motion or --

20 THE COURT: Well, I don't know if a discovery  
21 motion would do at that point. I think you need to  
22 address the merits.

23 MR. McKEE: Okay. All right, Your Honor.  
24 Well, then I guess I'd like to object to it because I  
25 think it prejudices me, but I will definitely work this

1 weekend to put in some sort of motion for the Court.  
2 Unfortunately, my files are still down at property, the  
3 majority of this case, and I won't be able to access  
4 them till Monday, so it's kind of putting me in a short  
5 time frame.

6 THE COURT: Well, I would think that your  
7 files related to this case would be ones that you would  
8 really want to have available. Have you researched all  
9 your boxes so you know where these files are?

10 MR. McKEE: Yeah. I know where they are, Your  
11 Honor. It's just I don't have access to them until  
12 Monday unless the Attorney General can maybe intervene  
13 and ask that I go down and pick them up. I'm only  
14 allowed one box in my cell at a time, and I have several  
15 other issues going. I think it's my fault. I should  
16 have kept the files in my house.

17 THE COURT: I think those are choices that you  
18 need to make about which cases you are going to work on  
19 in light of your court deadlines. I am not going to  
20 make any other instructions at this point.

21 MR. McKEE: Okay, Your Honor.

22 THE COURT: Okay. Good luck.

23 MS. OLSEN: Thank you, Your Honor.

24 (Proceedings were concluded.)  
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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF THURSTON )

I, Cheri L. Davidson, Notary Public, in and for the State of Washington, residing at Olympia, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Paula Casey on the 30th day of April, 2010 at the Thurston County Courthouse, Olympia, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, in and for the State of Washington, residing at Olympia.

332

# APPENDIX



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Date: May 14, 2010  
Time: 11:00 am  
Judge: Paula Casey  
Location: Telephonic

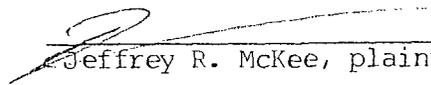
SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY

JEFFREY R. MCKEE, ) No. 08-2-00386-5  
Plaintiff, )  
 ) PLAINIFF'S CR 56 MOTION  
v. ) FOR SUMMARY JUDGMENT  
 )  
WDOC, et. al., )  
Defendant(s). )

COMES NOW, Plaintiff, Jeffrey R. McKee, pro se, moves this court for CR 56 Summary Judgment against defendants, Washington State Department of Corrections.

This motion is brought pursuant to CR 56, Neighborhood Alliance of Spokane County v. County of Spokane, 153 Wa.App. 241, 224 P.3d 775 and supported by the attached Plaintiff's Memorandum in Support of Motion for Summary Judgement.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of May, 2010.

  
Jeffrey R. McKee, plaintiff pro se

128

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GR 3.1 DECLARATION OF SERVICE

I, Jeffrey R. McKee, plaintiff, pro se, declare under penalty of perjury that today I caused to be mailed via the prison "Legal Mail" system, postage pre paid, the following documents;

- 1. Plaintiff's CR 56 Motion For Summary Judgment

To defendants counsel of record in, Thurston  
County Superior Court cause No. 08-2-00386-5.

DATED this 7<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
Jeffrey R. McKee, plaintiff pro se

129

Jeffrey R. McKee  
WDOC 882819  
Coyote ridge Corrections Center  
PO BOX 769 HA38  
Connell, Wa 99326

October 3, 2011

ATTN: Debbie  
Washington State Court of Appeals Div. II  
950 Broadway, Suite 300  
Tacoma, Wa 98402

RECEIVED  
OCT 06 2011

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

RE: Jeffrey R. McKee v. Washington State Department of Corrections, No. 40939-9-II

Dear Debbie,

Enclosed please find Appellant's opening brief in the above named cause, along with Appellant's GR 3.1 declaration for service by mail (page 29), in the above named matter. A check in the amount of \$300.00 for the sanction has or will be issued to the court on or before October 9, 2011.

Sincerely,



Jeffrey R. McKee

cc. file