

BY: Randy Mataya

I have received over a thousand letters from 'all of you, asking me various questions about the DOC 50% deductions case (KERBY) and other non-related issues. I cannot answer every letter individually because I don't have that kind of cash flow. So, I'm going to do it in this newsletter that FFUP (PEG) is kind enough to offer a place to me for it.

CURRENT STATUS OF KERBY

As everyone already knows, I litigated KERBY and we won. There is a lot of you that have offered your input into what KERBY means, and some of you have criticized my work as not making all the claims in KERBY that I could have made. Here is the answer to you. One legal beagle said I filed a certiorari in KERBY and in it I failed to seek recovery of the illegal deductions. That is a falsehood. I never did a certiorari action in KERBY. I filed a "Petition for temporary injunction/permanent injunction, and petition for a declaratory judgment". Both actions combined into a single action under the statutory authority of 813.40 and 227.40 of the Wis. Stats. I served a copy of this action on the, JOINT COMMITTEE FOR ADMINISTRATIVE RULE REVIEW, a copy of it on WISCONSIN ATTORNEY GENERAL BRAD D. SCHIMMEL and a copy of it on DEPARTMENT OF CORRECTIONS SECRETARY JON LITSCHER, pursuant to the statutes.

In this action, I alleged and proved by documentary evidence that the .DOC'S actions were illegal. First, before I get into all of the legalities of it, I wish to also state that I premised some of my arguments on an obscure DOC Administrative Code known as 309.465. A code that is still active and full of venomous liquid against DOC. I direct you to look it up on the Lexis or in an old 309. It states a lot for one paragraph. When 973.045, 973.05 and 973.06 came into Our existence, the DOC' created an' promulgated an Administrative Code, 309.465 that would operate in conjunction with these cited statutes.

The DOJ argues in KERBY that there is nothing in the Statutes that commands that DOC assess and collect any specified percentage, and that said DOC can make their own percentage up and no court can touch their decision because its solely upon .DOC to take whatever percentage it desires to take. HOWEVER, when I quoted 309.465 it eliminated any argument the DOJ could make. The DOC and DOJ, to this date, have not made any statement about my assertion that 309.465 controls their taking 25% of money. You see, a statute controls administrative codes and administrative codes control IPM and DAI policy making authority. No adm. code or policy can conflict with any state statutes. 227.10.

The entire reason I determined a declaratory judgment was needed, was because 309.45.02 runs contrary to 309.465 and 973.045, 973.05 and 973.06. Any attack on policies or codes has to run through 227.40 declaratory judgment proceedings, which is why the Judge, Shelley Gaylord, found DOC taking 50% was illegal as it runs contrary to 309.465 and 973.05, and then she determined that irreparable harm would be caused if 309.465.02 was left in place so she --issued the injunction.

The whole reason why she determined this action was also a cert. action was based on AAG Rice's dumb ass assertions that only a cert. can challenge a DCC decision. I argued that certiorari was an ineffective remedy in light of on point statutory authorities in 227.40 and 813.40. Further, that certiorari lies when there is no other available remedy at law. I also argued that if this action had to be certiorari, that the brief, petitions and documents filed by Kerby are the administrative record so the judge could still move forward with the petitions and simply use certiorari law in the first stage of the proceedings. She opted to follow that request and we won.

I sought recovery of every 50% deduction made, that 25% of each deduction must be returned to KERBY to make him "whole" under the law. I sought recovery of supervision fees illegally taken and I filed a notice of injury and claim with the AG but for some odd reason the judge determined we did-none of that. Order a copy of the action from the Dane County Circuit Court and you too will see that everything was raised.

The best advice I give to you is for you to wait until KERBY is decided by the Court of appeals. CASE NO. 2018AP0284. File nothing until then. No matter how the court rules, it will have an effect on you so you need to wait!!

The one person that I respect and accept any legal speak from is Harlan Richards. He-too has told you guys to wait for KERBY. That is 100% real deal advice. Save your money and frustration until KERBY is decided.

I finished the response brief and mailed it to KERBY on 6-13-18. He will get copies and file it by its due date of 6-21-18. in this "appeal" the DOJ made multiple claims that were never made in the circuit court and that DOC staff never made in their rulings on our ICIS'. Now they claim the action itself was illegal, that the judge made 3 mistakes in deciding this. All frivolous claims which I had the pleasure of stepping on when I responded. They claim 301.31 and 301.32 give them authority to take what they want. Neither supports that. 301/31 deals with industry inmates and 301.32's only change from act 355 was to add restitution into the statutory language. Nothing said 50%. Even if it did, my ex post facto arguments and my argument that act 355 was not determined to be retroactive by the very legislature that enacted 355. I argue that they did so because they knew it would implicate ex post facto law.

I argued that collecting supervision fees was not authorized by DOC policy or adm. Codes and refunds should be issued to all inmates. I never argued this case from the perspective that KERBY was the only person effected by DOC 50%. I always used the term, "every inmate" and I asked the judge to appoint counsel for the purpose of making this a class action, by separate motion. That motion was never even addressed because the AG wanted this to be a certiorari. The COA will have its hands full to sort this all out. I believe we win and that win will be based on DOC ADM. CODE 309.465 language and authority. The DOC never

repealed 309.465 when it made 309.45.02!!! 309.465 rules out all of the DOJ arguments because the agency only has the authority to act in the manner they themselves promulgated into law!! 309.465 was promulgated into DOC law in 1986!!!!

Please, don't listen to anyone that tells you to file anything! You will just be frustrated. The DOC stance is now that you file an ICI, its untimely since the 309.45.02 policy went into effect in 2016, and they reject the ICI. Rejected ICI gets appealed to the Warden and that is final. Wait for Kerby to be decided. If we win Kerby, file your ICI based on the date of its decision!!! DOC will have to accept it.

Now, to all of you seeking joinder. FORGET ABOUT IT. As long as a ruling of "certiorari"! stands in place, joinder will not happen. Your JOC,, facts involved in your deductions, etc, whether they are a match to KERBY or not, will not get the courts to permit joinder. 803.02(2) appears to 'allow joinder. However, the judge in KERBY won't allow it and, you'd have q appeal that denial to the COA. Most persons seeking joinder did not file timely ICIs and exhaust adm. remedies. I know we should not have to, but that pesky PLRA and 801.02 Wis. Stats will allow the courts to deny joinder. PRISONERS are held to an entirely different set of procedures than free world people are. I know we should be allowed to join Kerby via 803'.62(2) but until one of you File a timely notice of appeal and litigates that denial, we are all stuck with 801.02!!!!!!! '

The wannabes keep harping about filing this and filing that. Use your best judgment. Listen to the people that WIN actions, not the ones who have nothing better to do than "appear" to be intelligent. Without administrative exhaustion of your claims, you have no legal options unless you meet stringent criteria for your failures. This article is meant to provide you with an update on KERBY and a notice to all of you that have not exhausted your remedies that you will not get relief unless you exhaust. It's also to let everyone know that a lot of people have their On opinions" on this and to you guys that hear those opinions, I say this ... what did the opinion giver win? KERBY? No, that was me. HOWARD? NO, that was Josh. Anyone else? Hmm.

As for the OCI certified jailhouse lawyer's advice? He missed the point too. I did not see 309.465 in his writings. All I see is his opinions on what me win means and what Josh's win means and his U.S. Supreme Court cites about due process and equal treatment, which are already addressed in KERBY. Simply restating what has already been done by a winner, is borderline plagiarism. DO YOUR, LEGAL RESEARCH BEFORE you give out advice people!!!

Wisconsin DOC administrative Code 309.465 Crime victim and witness assistance surcharge. For an inmate who committed a crime on or after October 1, 1983, and who has not paid the crime victim and witness assistance surcharge required under s. [973.045](#), Stats., upon transfer to the first permanent placement and in all subsequent placements in correctional institutions, the institution business office shall deduct 25% of all income earned by or received for the benefit of the inmate until the surcharge is paid in full. The business office shall forward the funds to the state treasurer to satisfy the surcharge in accordance with s. [973.045](#), Stats.

973.045 Crime victim and witness assistance surcharge.

(1) If a court imposes a sentence or places a person on probation, the court shall impose a crime victim and witness assistance surcharge. A surcharge imposed under this subsection may not be waived, reduced, or forgiven for any reason. The surcharge is the total amount calculated by adding up the amount for every misdemeanor count and every felony count as follows:

- (a) For each misdemeanor count on which a conviction occurred, \$67.
- (b) For each felony count on which a conviction occurred, \$92.

(1m)

(a) In this subsection, "civil offense" means an offense punishable by a forfeiture.

(b) If all of the following apply, the court shall impose a crime victim and witness assistance surcharge in addition to any forfeiture that it imposes:

1. The person is charged with one or more crimes in a complaint.
2. As a result of the complaint being amended, the person is charged with a civil offense in lieu of one of those crimes.
3. The court finds that the person committed that civil offense on or after October 27, 2007.

(c) The amount of the surcharge imposed under par. (b) shall be the amount specified in sub. (1) (a) or (b), depending on whether the crime that was the subject of the amendment under par. (b) 2. was a misdemeanor or a felony.

(2) After the clerk determines the amount due, the clerk of court shall collect and transmit the amount to the county treasurer under s. [59.40 \(2\) \(m\)](#). The county treasurer shall then make payment to the secretary of administration under s. [59.25 \(3\) \(f\) 2](#). The secretary of administration shall credit to the appropriation account under s. [20.455 \(5\) \(g\)](#) the amount paid to the secretary by the county treasurer under this subsection and any amount collected under sub. (4).

(4) If an inmate in a state prison or a person sentenced to a state prison has not paid the crime victim and witness assistance surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

History: [1983 a. 27](#); [1987 a. 27](#); [1989 a. 31](#); [1993 a. 16](#); [1995 a. 201](#); [2003 a. 33](#); [2005 a. 25](#); [2007 a. 20](#); [2009 a. 28](#); [2011 a. 32](#), [257](#); [2011 a. 260 s. 81](#); [2013 a. 20](#).