

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

Petitioner,

v.

PETER HUIBREGTSE, BURTON COX,  
JEFFREY ENDICOTT, MATTHEW FRANK,  
STEVE CASPERSON, CINDY SAWINSKI,  
AMY CAMPBELL, BRIAN KOOL and  
JUDITH HUIREGTSE,

Respondents.  
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ORDER

05-C-157-C

This is a proposed civil action for monetary, declaratory and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner has no means with which to pay an initial partial payment of the \$250 filing fee.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the

litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

## ALLEGATIONS OF FACT

### A. Parties

Petitioner Titus Henderson is a Wisconsin state inmate currently incarcerated at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. At the Secure Program Facility, respondent Jeffrey Endicott is the warden, respondent Peter Huibregtse is the deputy warden, respondent Burton Cox is a doctor, respondent Cindy Sawinski is a nurse manager,

respondent Amy Campbell is a nurse, respondent Brian Kool is a unit manager and respondent Judith Huibregtse is the mail room sergeant. Respondent Matthew Frank is the Secretary of the Department of Corrections and respondent Steve Casperson is the administrator of the Department's Division of Adult Institutions.

### B. Stomach Bacteria

On September 22, 2004, petitioner suffered sharp pains and cramps in his stomach that prevented him from sleeping. The following day he submitted a request to see a doctor for pain treatment. On September 28, 2004, respondent Cox examined petitioner and told him that his blood test revealed that he had a bacteria (*Helicobacteria-pylori*) that causes stomach cancer and has been spreading among inmates at the Secure Program Facility since 2001. Petitioner asked respondent Cox how the bacteria spreads and why prison administrators hadn't stopped its spread. Respondent Cox indicated that there was no money in the prison's budget to spend locating the source of the bacteria even though 85% of the inmate population had contracted it.

Respondent Cox prescribed petitioner Amoxicillin, which is an experimental drug that has not been approved by the Food and Drug Administration. The Amoxicillin made petitioner's condition worse; he suffered hallucinations, seizures, bloody diarrhea and "non-specific hepatitis." When petitioner complained about these new maladies, respondent

Campbell confiscated his medication. In addition, respondent Campbell told petitioner he would have to make a co-payment if he wanted to see a doctor.

Pursuant to a policy approved and enforced by respondents Frank, Endicott and Huibregtse, petitioner is forced to sleep with his head near an unsanitary toilet which is cleaned each week with “the same unsanitary fecal waste water used by 25-50 other prisoners with other diseases.” As a result, petitioner inhales fecal particles that circulate through the air while he sleeps. Bugs surround the water and toilet stand and the prison has no procedure or policy under which inmates can request extermination.

Respondents Frank and Casperson are responsible for the budget cuts that prevented prison administrators from finding the source of the bacteria. At the time they made these budget cuts, they knew that *Helicobacteria-pylori* is a communicable bacteria that causes stomach cancer. In addition, respondents Frank and Casperson knew that the bacteria could be spread through polluted water.

### C. Denied Promotion to Level 3

On November 24, 2004, petitioner received a questionnaire that he was to fill out in order to be promoted to level three. (The Wisconsin Secure Program Facility implements a five level behavior modification program. Inmates on lower levels are provided with fewer privileges than inmates on higher levels. Inmates must spend a fixed amount of time without

incident at each level before being allowed to move progressively up through the level system and eventually out of Supermax. Jones'el v. Berge, 164 F. Supp. 1096 (W.D. Wis. 2001).) The questionnaire required inmates to answer each question, one of which was why the inmate was transferred to the Secure Program Facility. In response to this question, petitioner wrote that he had been sent to the institution from the Redgranite Correctional Institution because he had filed a lawsuit against various prison officials at the Redgranite facility. Respondent Kool denied petitioner a promotion to level three for saying that he had sued Redgranite prison officials. Petitioner remains on level two where he is subject to greater restrictions and afforded fewer privileges than inmates on level three. Petitioner asked for a chance to fill out the promotion form again but respondent Kool refused his request. Petitioner complained about respondent Kool's actions to respondent Casperson, who directed respondent Peter Huibregtse to address the problem. Respondent Peter Huibregtse approved respondent Kool's actions.

#### D. Mail Policy

Respondents Endicott and Judith Huibregtse have adopted and continue to implement a policy of censoring outgoing mail. Under this policy, letters that inform friends and family of wrongful conduct by prison staff are rejected and not mailed out. This policy applies to privileged legal mail as well as letters to friends and family. Respondent Judith

Huibregtse has censored petitioner's incoming and outgoing mail by placing a red label on the mail because petitioner exposed prison officials' disregard for inmates' risk of contracting *Helicobacteria-pylori*.

## DISCUSSION

### A. Eighth Amendment

The Eighth Amendment guarantees the right to be free of cruel and unusual punishment. Claims of Eighth Amendment violations typically fall into one of four analytical frameworks: excessive force, failure to protect, deliberate indifference to serious medical needs and inhumane conditions of confinement. Cf. Oliver v. Deen, 77 F.3d 156, 159 (7th Cir. 1996) (Eighth Amendment imposes affirmative obligation on prison officials to insure that inmates receive adequate food, clothing, shelter, protection and medical care). I understand petitioner to allege three Eighth Amendment violations: (1) respondents Frank, Casperson, Endicott and Peter Huibregtse forced him to sleep with his head near an unsanitary toilet, causing him to contract a bacterial infection; (2) respondent Cox failed to treat petitioner's stomach bacteria infection with appropriate medication; and (3) respondent Campbell refused to treat the symptoms petitioner suffered as a result of the inappropriate medication respondent Cox had prescribed. In the first of these claims, petitioner challenges the conditions of his confinement while in the second and third, he

charges respondents with deliberate indifference to his serious medical needs.

### 1. Conditions of Confinement

The Eighth Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain” or that are “grossly disproportionate to the severity of the crime warranting imprisonment.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981). A claim asserting cruel and unusual conditions of confinement must satisfy a two-part test, with a subjective and an objective component. Farmer v. Brennan, 511 U.S. 825, 835 (1994). Petitioner’s allegations must suggest both that the conditions to which he was subjected were “sufficiently serious” (objective component) and that respondents were deliberately indifferent to the his health or safety (subjective component). Id.

The standard for determining whether prison conditions satisfy the objective component focuses on whether the conditions are contrary to “the evolving standards of decency that mark the progress of a maturing society.” Farmer, 511 U.S. at 833-34 (internal quotations omitted). Generally, the question is defined as whether the inmate has been denied “the minimal civilized measure of life’s necessities.” Rhodes, 452 U.S. at 347. To satisfy this test, the conditions must be “extreme”; mere discomfort is insufficient. Henderson v. Sheahan, 196 F.3d 839, 845 (7th Cir, 1999); Hudson v. McMillan, 503 U.S. 1, 8-9 (1993). If a prisoner is being exposed to “an unreasonable risk of serious damage to

his future health,” this may satisfy the Eighth Amendment's objective component. Helling v. McKinney, 509 U.S. 25, 35 (1993).

Petitioner’s assertion that he has contracted H-pylori because of the proximity of the head of his bed to a toilet that has been cleaned with unsanitary water appears to be wild speculation on petitioner’s part. According to the United States Department of Health and Human Services Centers for Disease Control and Prevention, approximately two-thirds of the world’s population is infected with H. pylori; it is not known how the bacteria is transmitted or why some patients become symptomatic while others do not; and it is believed that the bacteria are most likely spread from person to person through fecal-oral or oral-oral routes. <http://www.cdc.gov/ulcer/md.htm>. Nevertheless, accepting plaintiff’s allegations as true as I must at this early stage of the proceedings, I will assume that his conditions are sufficiently serious to satisfy the objective component of the Eighth Amendment analysis. Helling, 509 U.S. at 35-37 (allegations of exposure to high levels of environmental tobacco smoke satisfy objective component of pleading requirement); Carroll v. DeTella, 255 F.3d 470, 472 (7th Cir. 2001) (“Poisoning the prison water supply or deliberately inducing cancer in a prisoner would be forms of cruel and unusual punishment”). But see Harris v. Fleming, 839 F.2d 1232, 1235 (7th Cir. 1988) (ten days without toilet paper, toothbrush or toothpaste in a “filthy, roach- infested cell” did not constitute cruel and unusual punishment); Adams v. Pate, 445 F.2d 105, 108-09 (7th Cir.

1971) (no constitutional violation where inmate's cell was filthy and stunk, water faucet was inches above the toilet and ventilation was inadequate).

However, to hold prison officials liable for inhuman conditions, an inmate plaintiff must allege not only that he is subject to conditions sufficiently serious on their face to state a constitutional claim but that the defendant prison officials "acted wantonly and with a sufficiently culpable state of mind." Lunsford, 17 F.3d at 1579. "Even objectively serious injuries suffered by prisoners, without the requisite mens rea on the part of prison officials, will not comprise a constitutional injury." Harper v. Albert, 400 F.3d 1052, 1065 (7th Cir. 2005). Before a prison official can be found to have acted with deliberate indifference, he or she "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Lunsford, 17 F.3d at 1579.

Petitioner's allegations do not suggest that respondents Frank, Casperson, Endicott and Peter Huibregtse acted with deliberate indifference. Petitioner alleges that respondents Frank and Casperson knew that *Helicobacteria-pylori* is a communicable bacteria that can cause stomach cancer and that the bacteria could be spread through polluted water. However, petitioner does not allege that either of these respondents knew or had reason to suspect that the bacteria exists in the facility's water supply. Simply making budget cuts with knowledge that communicable diseases exist in the abstract is not deliberate

indifference. Petitioner's allegations that respondents Frank, Endicott and Huibregtse adopted and enforced a policy pursuant to which petitioner was forced to sleep with his head near an unsanitary toilet does not suggest deliberate indifference. Again, these allegations are insufficient to suggest that these respondents were aware of the "outbreak" of *Helicobacteria-pylori* bacteria at the prison or that inmates could become infected by sleeping with their head near a toilet. Because his allegations do not suggest deliberate indifference, petitioner will be denied leave to proceed on his Eighth Amendment conditions of confinement claim.

## 2. Deliberate indifference to a serious medical need

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. Detella, 95 F. 3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). However, this does not mean that prisoners are entitled to whatever medical treatment they desire. Prison officials violate their affirmative Eighth Amendment duty to provide adequate medical care only when they are deliberately indifferent to a prisoner's serious medical needs. Estelle, 429 U.S. at 104. In order to make out a deliberate indifference claim, petitioner must allege facts from which it can be inferred that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). Gutierrez v.

Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

“Serious medical needs,” encompass not only conditions that are life-threatening or that carry risks of permanent serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Id. at 1371. In addition, the Court of Appeals for the Seventh Circuit has recognized that a “‘serious’ medical need is one that has been diagnosed by a physician as mandating treatment.” Gutierrez, 111 F.3d at 1373. As I noted above, petitioner complains about the type of treatment of he received for his bacterial infection and about the lack of treatment for the side effects of the allegedly inappropriate medication. Petitioner’s allegations that his bacterial infection may lead to stomach cancer and that respondent Cox prescribed him medication are sufficient to suggest that the infection qualifies as a “serious medical need.” In addition, I will assume that the side effects petitioner allegedly suffered as a result of taking Amoxicillin, namely hallucinations, seizures, bloody diarrhea and “non-specific hepatitis” are sufficiently serious to satisfy the Eighth Amendment’s objective prong. (Although the very notion that petitioner contracted “non-specific hepatitis” from a prescribed pharmaceutical strikes me as incredible, I will take petitioner’s allegations at face value, as I must at this stage. Yeksigian v. Nappi, 900 F.2d 101, 102 (7th Cir. 1990).)

Although petitioner has alleged serious medical conditions, his complaint does not suggest that any respondent acted with deliberate indifference. Petitioner contends that

respondent Cox treated his bacterial infection with an experimental drug, Amoxicillin, which petitioner says has not been approved by the Food and Drug Administration. However, I take judicial notice of the fact that Amoxicillin is approved by the United States Food and Drug Administration. <http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm?fuseaction=Search.Overview&DrugName=AMOXICILLIN>. It is a semisynthetic antibiotic indicated for use in treating the bacteria *Helicobacter pylori*. Physicians' Desk Reference, 1427-28 (58th ed. 2004). Plaintiff's allegations are insufficient to suggest that he was provided inappropriate treatment for his infection; the fact that he may have disagreed with the prescribed treatment is not of constitutional consequence. Because "[a] prisoner's dissatisfaction with a doctor's prescribed course of treatment does not give rise to a constitutional claim unless the medical treatment is so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition," Snipes, 95 F.3d at 592 (internal quotations omitted), petitioner will be denied leave to proceed on his claim that respondent Cox was deliberately indifferent to his bacterial infection.

As for his claims of deliberate indifference to side effects petitioner allegedly suffered as a result of taking Amoxicillin, petitioner alleges that respondent Campbell took away his Amoxicillin after he complained about the side effects and that she told him that he would have to make a co-payment if he wanted to see a doctor. Neither allegation suggests that respondent Campbell acted with deliberate indifference. Petitioner complained to

respondent Campbell that his medication was causing him serious side effects; her response in taking petitioner off the problematic medication indicates concern for petitioner's welfare, not reckless disregard to his health.

As for the required co-payment, petitioner does not allege that he could not afford the co-payment. Even if he had, the Wisconsin Department of Correction's co-payment policy provides that "[h]ealth services staff may not deny an inmate or a juvenile medical, dental or nursing services based only on the inmate's or the juvenile's inability to pay a co-payment." Wis. Admin. Code § DOC 316.03. When an inmate lacks the funds to make the required co-payment, the correction facility business department simply makes a notation on the inmate's trust account record indicating that the inmate owes the co-payment. Wis. Admin. Code § DOC 316.06(2). In order to establish that he is unable to pay the court's filing fee in full, petitioner submitted a copy of his trust fund account statement which shows that he was granted a medical co-payment loan on October 15, 2004; petitioner does not suggest that he could not have obtained a second medical co-payment loan.

"[A]n inmate does not state a claim under the Eighth Amendment when he cannot allege that he was denied medical treatment because he was unable to pay a nominal co-payment or fee." Gardner v. Wilson, 959 F. Supp. 1224, 1228 (C.D. Cal. 1997) (citing Shapley v. Nevada Board of State Prison Commissioners, 766 F.2d 404, 408 (9th Cir.1985)). Although the Court of Appeals for the Seventh Circuit has not yet addressed this issue, other

courts have consistently upheld the constitutionality of medical co-payment requirements so long as they do not prevent an inmate who cannot afford the co-payment from receiving medical care. Reynolds v. Wagner, 128 F.3d 166, 174 (3d Cir. 1997) (“If a prisoner is able to pay for medical care, requiring such payment is not ‘deliberate indifference to serious medical needs’”) (citation omitted); Hutchinson v. Belt, 957 F. Supp. 97, 100 (W.D. La.1996) (allegation that medical care was not free does not state claim of deliberate indifference); Bihms v. Klevenhagen, 928 F. Supp. 717, 718 (S.D. Tex.1996) (state may require reimbursement for medical expenses from inmate who can afford to pay); Hudgins v. DeBruyn, 922 F. Supp. 144 (S.D. Ind. 1996) (co-payment requirement for over-the-counter medications constitutional; policy had exceptions to avoid hardship for chronically ill inmates and contained provision that inmates could not be denied treatment for inability to pay); Johnson v. Department of Public Safety and Correctional Services, 885 F. Supp. 817, 820 (D. Md.1995) (“because the policy mandates that no one shall be refused treatment for an inability to pay, the co-payment will not result in a denial of care”); Martin v. Debruyn, 880 F. Supp. 610, 614 (N.D. Ind.1995) (“A prison official who withholds necessary medical care, for want of payment, from an inmate who could not pay would violate the inmate’s constitutional rights if the inmate’s medical needs were serious . . . [b]ut insisting that an inmate with sufficient funds use those funds to pay for medical care is neither deliberate indifference nor punishment.”). Because the Wisconsin Department of

Corrections' co-payment policy will not prevent an indigent inmate from receiving medical care, it does not violate the Eighth Amendment.

## B. First Amendment

### I. Retaliation

A prison official who takes action in retaliation for a prisoner's exercise of a constitutional right may be liable to the prisoner for damages. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). Otherwise lawful action "taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). To state a claim for retaliation, a petitioner need not allege a chronology of events from which retaliation could be plausibly inferred. Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002). However, he must allege sufficient facts to put the respondents on notice of the claim so that they can file an answer. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). This minimal requirement is satisfied where a petitioner specifies the protected conduct and the act of retaliation. Id.

Petitioner contends that respondent Kool denied him a promotion to level three for saying that he had been transferred to the Wisconsin Secure Program Facility because he sued Redgranite prison officials. It is well established that inmates have a constitutionally protected right to file an inmate grievance complaining about the conditions of their

confinement stemming from their First Amendment right to free speech, petition and access to the courts. Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002); see also DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000) (prison official may not retaliate against prisoner for filing grievance); Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996) (retaliating against inmate for using inmate grievance system violates First Amendment). Although a complaint would not lose its protected status simply because it was not made on the appropriate forms, Walker, 288 F.3d at 1009, petitioner's comments do not implicate his First Amendment right to petition and access to the courts; he was not seeking redress or to air his grievances. Nonetheless, petitioner's right to free speech may provide protection for his comments. "[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

At this early stage, I will assume that petitioner was exercising his First Amendment right to free speech when he wrote on his promotion questionnaire form that he had been transferred to the Wisconsin Secure Program Facility because he had filed a lawsuit against Redgranite prison officials. Because petitioner has identified an act of retaliation, namely respondent Kool's denying his promotion to level three, I will allow petitioner to proceed on his First Amendment retaliation claim.

## 2. Censorship

Prison officials violate the First Amendment when for reasons unrelated to legitimate penological interests, they engage in “censorship of . . . [the] expression of ‘inflammatory political, racial, religious, or other views,’ and matter deemed ‘defamatory’ or ‘otherwise inappropriate.’” Procunier v. Martinez, 416 U.S. 396, 415 (1974). As a general rule, inmate mail can be opened and read outside the inmate’s presence, Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987), but repeatedly reading a prisoner’s legal mail outside his presence is actionable. Antonelli v. Sheahan, 81 F.3d 1422, 1431-32 (7th Cir. 1996). Petitioner claims that respondent Judith Huibregtse has “censored” his incoming and outgoing mail by placing a red label on it. Absent an allegation about the effect that the red label had on the delivery of petitioner’s mail, there is no real suggestion of censorship. Petitioner does not allege that prison officials failed to deliver his mail, delayed in delivering his mail, read his legal mail outside his presence or for that matter, read any of his mail, legal or non-legal, outgoing or incoming, either in or out of his presence. Absent any such allegation, I will deny him leave to proceed on his mail censorship claim.

### C. Due Process

Petitioner’s allegations suggest that he thinks that respondent Kool violated his due process rights by denying him a promotion to level three. I have ruled on more than one

occasion that the level system and the related increase or decrease in privileges and property do not implicate a liberty interest. E.g. Garrett v. Berge, 04-C-226-C (W.D. Wis. Sept. 26, 2001); Irby v. Thompson, 03-C-346-C (W.D. Wis. Sept. 2, 2003); Lindell v. Litscher, 02-C-21-C (W.D. Wis. May 28, 2002). As I have noted in these other cases, in the prison context, protected liberty interests are essentially limited to the loss of good time credits. Sandin v. Conner, 515 U.S. 472, 483-484 (1995) (liberty interests of prisoners are “generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life”); Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty). Under Sandin, alleged losses of privilege and property do not impose atypical and significant hardships on plaintiffs because they do not create a loss in good time credits or otherwise lengthen an inmate’s sentence. Because petitioner’s allegations do not suggest the deprivation of a protected liberty interest, I will deny him leave to proceed on his procedural due process claim. Montgomery v. Anderson, 262 F.3d 641, 644 (7th Cir. 2001) (in absence of liberty interest, “the state is free to use any procedures it chooses, or no procedures at all”).

## ORDER

IT IS ORDERED that

1. Petitioner Titus Henderson's request for leave to proceed in forma pauperis is GRANTED on his claim against respondent Brian Kool denied him a promotion to security level three in retaliation for petitioner's statement that he had been transferred to the Wisconsin Secure Program Facility because he had sued Redgranite Correctional Institution officers;

2. Petitioner is DENIED leave to proceed on his claims that (1) respondent Kool violated his due process rights by denying him a promotion to level three; (2) respondent Judith Huibregtse censored his mail in violation of the First Amendment; (3) respondents Matthew Frank, Steve Casperson, Jeffrey Endicott and Peter Huibregtse forced him to sleep with his head near an unsanitary toilet causing him to contract a bacterial infection, in violation of the Eighth Amendment; (4) respondent Burton Cox was deliberately indifferent to his serious medical needs by failing to treat his stomach bacteria infection with appropriate medication; and (5) respondent Amy Campbell violated petitioner's Eighth Amendment rights by refusing to treat the symptoms petitioner suffered as a result of the medication respondent Cox had prescribed;

3. The complaint is DISMISSED as to respondents Endicott, Peter Huibregtse, Cox, Cindy Sawinski, Campbell, Judith Huibregtse, Frank and Casperson;

4. For the remainder of this lawsuit, petitioner must send respondent Kool a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. The unpaid balance of petitioner's filing fee is \$250; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

7. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendant.

8. Petitioner submitted documentation of exhaustion of administrative remedies with his complaint. Those papers are not considered to be a part of petitioner's complaint.

However, they are being held in the file of this case in the event respondents wish to examine them.

Entered this 25th day of April, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge