

05-1821-CD
Robert Pushinsky vs Dept of Correct. Al

05-1821-CD
R. Pushinsky vs Dept of Corrections et al

Date: 2/22/2006
Time: 03:14 PM
Page 1 of 1

Clearfield County Court of Common Pleas
ROA Report
Case: 2005-01821-CD
Current Judge: No Judge

User: BILLSHAW

Civil Other

Date		Judge
11/21/2005	New Case Filed. Contents of Original Record, filed. File received from Commonwealth Court and was incomplete, noted on Docket Sheet. Filing: Order from Commonwealth Court to Transfer from case from Commonwealth to Court of Common Pleas of Clearfield County . Paid by: Pushinsky, Robert C. (plaintiff) Receipt number: 1911385 Dated: 11/21/2005 Amount: \$0.00 (Cash) Copy of Order with Clearfield County Case No. 2005-1821-CD to Pushinsky and Atty. Rand.	No Judge
2/17/2006	Defendants' Answer to Motion Compel Discovery and Request for Extension of Time to Respond to Discovery Requests, filed by Atty. Jarvis 1 Cert. to Atty.	No Judge <u>Pushinsky</u>
2/22/2006	Motion To Compel Discovery, filed by s/ Robert C Pushinsky, Plaintiff. No CC	No Judge <u>Pushinsky</u>



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

November 14, 2005

Irvis Office Building, Room 624
Harrisburg, PA 17120
717-255-1650

FILED

2005-1821-C0

NOV 21 2005

Free

TO:

RE: Pushinsky v. DOC, et al
No.108 MD 2005

Trial Court/Agency Dkt. Number: DU-8702
Trial Court/Agency Name: Department of Corrections

William A. Shaw
Prothonotary

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
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Date of Remand of Record:

Enclosed is an additional copy of the certificate. Please acknowledge receipt by signing, dating, and returning the enclosed copy to the Prothonotary Office or the Chief Clerk's office.

W.A. Shaw

Commonwealth Court Filing Office

W.A. Shaw
Signature

11-21-05

Date

William A. Shaw

Printed Name

FILE RECEIVED ON 11-21-05 WAS INCOMPLETE.
NOTED ON DOCKET SHEET.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert C. Pushinsky,
Petitioner

v.

Department of Corrections of the
Commonwealth of Pennsylvania;
Jeffrey A. Beard, Secretary of
Corrections; Sharon M. Burks, Chief
Grievance Coordinator; Nancy K.
Smith, Mailroom Supervisor;
Cynthia Kechisen, Principal/
Publication Review Committee;
George N. Patrick, Superintendent;
Peggy Baughman, Purchasing
Agent II, Defendants, Individually
and in their Official Capacities,

Respondents

2005-1821-C

FILED

NOV 21 2005

ml 2:00pm
William A. Shaw
Prothonotary

*CERT. COPIES TO
PUSHINSKY & RAND.*

No. 108 M.D. 2005 Certified from the Record

OCT 14 2005

and Order Exit

PER CURIAM

ORDER

Now, October 13, 2005, upon consideration of respondents' application for relief in the nature of a motion to dismiss for lack of subject matter jurisdiction, and upon consideration of this matter, which seeks money damages for the destruction of personal property, and it appearing that petitioner resides in Clearfield County and that venue may lie in that county, ~~this case is hereby transferred to the Court of Common Pleas of Clearfield County.~~ See 42 Pa. C.S. §5103.

The Chief Clerk shall certify a photocopy of the docket entries of the above matter and the record to the prothonotary of the Court of Common Pleas of Clearfield County.

Respondents' motion for stay of discovery is dismissed as moot.

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania**

Docket Number: 108 MD 2005
Page 1 of 7
November 14, 2005

Robert C. Pushinsky,
 Petitioner

v.
 Department of Corrections of the
 Commonwealth of Pennsylvania;
 Jeffrey A. Beard, Secretary of
 Corrections; Sharon M. Burks, Chief
 Grievance Coordinator; Nancy K. Smith,
 Mailroom Supervisor; Cynthia Kechisen,
 Principal/Publication Review Committee;
 George N. Patrick, Superintendent; Peggy
 Baughman, Purchasing Agent II,
 Defendants, Individually and in their
 Official Capacities,
 Respondents

Initiating Document: Complaint

Case Status: Closed

October 13, 2005 Completed

Case Processing Status:

Journal Number:

Case Category: Miscellaneous

CaseType:

Inmate Petition for Review

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Petitioner Pushinsky, Robert C.

Pro Se: ProSe

Appoint Counsel Status:

IFP Status: Yes

Attorney: Pushinsky, Robert Charles

Bar No.:

Law Firm:

Address: DU-8702, SCI Houtzdale
 P.O. Box 1000

Houtzdale, PA 16698

Phone No.:

Fax No.:

Receive Mail: Yes

Certified from the Record

NOV 14 2005

and Order Exit

Respondent Department of Corrections

Pro Se:

Appoint Counsel Status:

IFP Status:

Attorney: Rand, Debra S.

Law Firm:

Bar No.: 41661

Address: PA Dept of Corrections



Docket Number: 108 MD 2005
 Page 2 of 7
 November 14, 2005

55 Utley Drive
 Camp Hill, PA 17011
 Phone No.: (717)731-0444 Fax No.:

Receive Mail: Yes

Respondent Department of Corrections

Pro Se: Appoint Counsel Status:

IFP Status:

Attorney: Farnan, Michael A.

Bar No.: 69158 Law Firm:

Address: Office of Chief Counsel

55 Utley Drive

Camp Hill, PA 17011

Phone No.: Fax No.:

Receive Mail: No

TRIAL COURT/AGENCY INFORMATION

Court Below: Department of Corrections

County: Division:

Date of Order Appealed From: Judicial District:

Date Documents Received: March 7, 2005 Date Notice of Appeal Filed:

Order Type:

Judge: Lower Court Docket No.: DU-8702

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

BRIEFING SCHEDULE

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania



Docket Number: 108 MD 2005

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November 14, 2005

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Exit Date	Party Type	Filed By
March 4, 2005	Application to Proceed In Forma Pauperis IFP		Petitioner	Pushinsky, Robert C.
March 4, 2005	Application to File Reduced Number of Copies Petition to File a Reduce Number of Copies		Petitioner	Pushinsky, Robert C.
March 7, 2005	Complaint Filed		Petitioner	Pushinsky, Robert C.
March 15, 2005	Order Granting Application to Proceed In Forma Pauperis The matter shall be treated as a PFR addressed to this court's original jurisdiction.	3/16/2005		Per Curiam
March 17, 2005	Application for Extension of Time to File App. for an Enlargement of Time to Respond to the PFR		Respondent Respondent Respondent Respondent Respondent Respondent Respondent	Department of Corrections Beard, Jeffrey Burks, Sharon M. Patrick, George Smith, Nancy K. Kechisen, Cynthia Baughman, Peggy
March 17, 2005	Praecipe for Appearance Praecipe for Appearance Talaber, John J.		Respondent	Department of Corrections



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March 17, 2005	Praeclipe for Withdrawal of Appearance		
	M Praeclipe for Withdrawal of Appearance Farnan, Michael A.	Respondent	Department of Corrections
March 21, 2005	Order Granting Application for Extension of Time to File	3/22/2005	
	Respondent shall file its answer or otherwise plead by 5-16-05.		Per Curiam
May 17, 2005	Application for Extension of Time to File		
	M App. for a Second Enlargement of Time to Respond to the PFR	Respondent Respondent Respondent Respondent Respondent Respondent Respondent	Department of Corrections Beard, Jeffrey Burks, Sharon M. Patrick, George Smith, Nancy K. Kechisen, Cynthia Baughman, Peggy
May 17, 2005	Certificate of Service Filed		
	M by certified mail on AG only	Petitioner	Pushinsky, Robert C.
May 17, 2005	Order Granting Application for Extension of Time to File	5/18/2005	
	M Respondent shall file its answer or otherwise plead by 5-23-05. No further extensions will be granted absent extraordinary circumstances.		Per Curiam



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May 23, 2005 Answer and New Matter

Respondents' Answer and New Matter With Affirmative Defenses to the PFR

Respondent	Department of Corrections
Respondent	Beard, Jeffrey
Respondent	Burks, Sharon M.
Respondent	Patrick, George
Respondent	Smith, Nancy K.
Respondent	Kechisen, Cynthia
Respondent	Baughman, Peggy

June 24, 2005 Application for Extension of Time to File

Motion for Enlargement of Time to File Answer to Respondents' New Matter with Affirmative Defenses

Petitioner

Pushinsky, Robert C.

June 24, 2005 Order Granting Application for Extension of Time to File 6/27/2005

Petitioner's answer to new matter is due by 7-6-05.

Per Curiam

July 14, 2005 Answer to New Matter

Petitioner's Response to New Matter Nunc Pro Tunc

Petitioner

Pushinsky, Robert C.

September 19, 2005 Application for Relief

Request for Discovery

Petitioner

Pushinsky, Robert C.

October 6, 2005 Application to Withdraw As Counsel for Respondent?

Application to Withdraw As Counsel Talaber, John J.

Respondent

Department of Corrections



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 November 14, 2005

October 6, 2005	Praeclipe for Appearance Praeclipe for Appearance Rand, Debra S.	Respondent	Department of Corrections
October 7, 2005	Application for Stay ✓ Respondents' Motion to Stay Discovery	Respondent Respondent Respondent Respondent Respondent Respondent Respondent	Department of Corrections Beard, Jeffrey Burks, Sharon M. Patrick, George Smith, Nancy K. Kechisen, Cynthia Baughman, Peggy
October 7, 2005	Application to Dismiss ✓ Respondents' App. for Relief in the Nature of a Motion to Dismiss for Lack of Subject Matter	Respondent Respondent Respondent Respondent Respondent Respondent Respondent	Department of Corrections Beard, Jeffrey Burks, Sharon M. Patrick, George Smith, Nancy K. Kechisen, Cynthia Baughman, Peggy
Jurisdiction			
October 12, 2005	Order Granting Application to Withdraw as Counsel ✓ Order Granting Application to Withdraw as Counsel Talaber, John J.		Per Curiam
October 13, 2005	Transfer	10/14/2005	Per Curiam
This case is transferred to the Court of Common Pleas of Clearfield Co.			
November 14, 2005	Transfer to Court of Common Pleas Clearfield County.		Lower Court or Agency



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SESSION INFORMATION

Journal Number:
Consideration Type:
Date Listed/Submitted:

DISPOSITION INFORMATION

Related Journal Number:	Disposition Date:	10/13/2005	
Disposition Category:	Disposed Before Decision	Disposition Author:	Per Curiam
Disposition:	Transfer	Disposition Date:	10/13/2005

Dispositional Comments: This case is transferred to the Court of Common Pleas of Clearfield Co.

Dispositional Filing: Author:
Filed Date:

REARGUMENT/RECONSIDERATION/REMITTAL

Reargument/Reconsideration Filed Date:
Reargument Disposition: Date:
Record Remitted:

COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, Plaintiff

vs.

DEPARTMENT OF CORRECTIONS OF THE
COMMONWEALTH OF PENNSYLVANIA, and
Other Defendants.

) CIVIL ACTION LAW
No. 108 M D 2005
JUDGE _____

IN FORMA PAUPERIS

1. I am the plaintiff in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: ROBERT C. PUSHINSKY

Address: Inst. No. DU-8702, P.O. Box 1000, Houtzdale, PA 16698

Social Security Number: 187-54-5033

(b) Employment none

(c) Other income within the past twelve months: Approximately \$200 dollars from the DOC for inmate job. I currently make about \$20 dollars a month.

(d) Other contrabututions to household support. none

(e) Property owned. . nothing of value

(f) Debts and Obligations: Loans more than 10,000. Fines/etc excess of 10,000.

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 3/2/05

Robert C. Pushinsky
ROBERT C. PUSHINSKY

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
MAR -4 A 8:37

COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, Plaintiff

vs.

DEPARTMENT OF CORRECTIONS OF THE
COMMONWEALTH OF PENNSYLVANIA, and
Other Defendants.

) CIVIL ACTION LAW
No. 108 MD 2005
JUDGE _____

PETITION TO FILE A REDUCE NUMBER OF COPIES

1. I am the plaintiff in the above matter and because of my financial condition am unable to file more than 1 copy.

2. I am unable to obtain funds from anyone, including my family and associates, to pay for the copies.

3. I represent that the information below relating to my ability to file the copies is true and correct:

(a) Name: ROBERT C. PUSHINSKY

Address: Inst. No. DU-8702, P.O. Box 1000, Houtzdale, PA 16698
Social Security Number: 187-54-5033

(b) Employment none

(c) Other income within the past twelve months: Approximately \$200 dollars from the DOC for inmate job. I currently make about \$20 dollars a month.

(d) Other contrabututions to household support. none

(e) Property owned. nothing of value

(f) Debts and Obligations: Loans more than 10,000. Fines/etc excess of 10,000.

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to file the proper number of copies.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 3/2/05

Robert C. Pushinsky
ROBERT C. PUSHINSKY

~~PETITION TO FILE A REDUCE NUMBER OF COPIES~~

R.C.P.

2005 MAR -U A 8:37
RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

Robert C. Pushinsky
Inst. No. DU-8702
P.O. Box 1000
Houtzdale, PA 16698-1000

3/2/05

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
624 Irvis Office Building
Harrisburg, PA 17120

108 m/s 2005

RE: Newly filed Civil Action dated 3/2/05, Robert C. Pushinsky vs. DOC and other Defendants.

To the Prothonotary:

Enclosed please find a Petition to File a Reduced Number of Copies and an IN FORMA PAUPERIS petition. I forgot to put them in with the Complaint. I am mailing this on the same day as the complaint; complaint is in the Prisoner Mail Box already and I am unable to get it to place these petitions in the same envelope. Please place these with complaint. Thank you kindly for your time and consideration.

Sincerely,

Robert C. Pushinsky
Robert C. Pushinsky

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
2005 MAR -4 A 8:37

COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, Plaintiff

vs.

DEPARTMENT OF CORRECTIONS OF THE
COMMONWEALTH OF PENNSYLVANIA;
JEFFREY A. BEARD, SECRETARY OF
CORRECTIONS;
SHARON M. BURKS, CHIEF GRIEVANCE
COORDINATOR;
NANCY K. SMITH, MAILROOM SUPERVISOR;
CYNTHIA KECHISEN, PRINCIPAL/PUBLICATION
REVIEW COMMITTEE;
GEORGE N. PATRICK, SUPERINTENDENT;
PEGGY BAUGHMAN, PURCHASING AGENT II
Defendants, Individually and in
their Official Capacities.

CIVIL ACTION LAW

No. 108 MD 2005

JUDGE _____

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

-7 MAR 2005 09 18

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR ATTORNEY AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Department of Corrections
Office of Chief/General Counsel
55 Utley Drive
Camp Hill, PA 17011

(717) 731-0444
Phone

COMMONWEALTH COURT OF PENNSYLVANIA

SIC

ROBERT C. PUSHINSKY, Plaintiff)
vs.) CIVIL ACTION LAW
DEPARTMENT OF CORRECTIONS OF THE) No. 138 MO 205
COMMONWEALTH OF PENNSYLVANIA;)
JEFFREY A. BEARD, SECRETARY OF)
CORRECTIONS;)
SHARON M. BURKS, CHIEF GRIEVANCE)
COORDINATOR;)
NANCY K. SMITH, MAILROOM SUPERVISOR;)
CYNTHIA KECHISEN, PRINCIPAL/PUBLICATION)
REVIEW COMMITTEE;)
GEORGE N. PATRICK, SUPERINTENDENT;)
PEGGY BAUGHMAN, PURCHASING AGENT II)
Defendants, Individually and in)
their Official Capacities.)
JUDGE _____

COMPLAINT

Plaintiff Robert C. Pushinsky, pro se, for his complaint against Defendants Department of Corrections, Jeffrey A. Beard, Sharon M. Burks, Nancy K. Smith, Cynthia Kechisen, George N. Patrick, and Peggy Baughman, alleges as follows:

I. JURISDICTION AND VENUE

1. The Commonwealth Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761 because the Defendants are the Commonwealth government and officers thereof acting in their official capacities. The matters in controversy arise under 42 U.S.C. § 1983 to remedy the deprivation, under color of State Law, of rights guaranteed by the First, Fourth, Fourteenth Amendments to the United States Constitution as well as corresponding rights guaranteed under Article I Sections 1, 8, and 20 of the Pennsylvania Constitution.

2. Venue properly lies in the Commonwealth Court pursuant to 42 Pa.C.S. § 8523, because the events giving rise to the causes of action occurred at a State Correctional Institution operated by the Department of Corrections, the

principle office of which is located within Dauphin County.

3. Plaintiff Pushinsky's request for Declaratory Judgment within the discretion of this Honorable Court is proper pursuant to Pa.C.S. § 7531 et seq.

II. PARTIES

4. Plaintiff Robert C. Pushinsky (Pushinsky) was and is at all times relevant hereto, a prisoner in the custody of the Department of Corrections (DOC) under institution number DU-8702. At the time of the events relevant hereto Pushinsky was and remains incarcerated at the State Correctional Institution at Houtzdale (HOU) located on State Route 2007 in the borough of Houtzdale in the Commonwealth of Pennsylvania.

5. Defendant Department of Corrections (DOC) is charged with responsibility to operate all of the state Correctional Institutions of this Commonwealth who at all times relevant hereto was and is located at box 598, 2520 Lisburn Road, Camp Hill, Pennsylvania 17001-0598.

6. Defendant Jeffrey A. Beard was and is at all times relevant hereto the Secretary of Corrections appointed to the position and charged with the responsibility to oversee the DOC.

7. Defendant Sharon M. Burks (Burks) was and is at all times relevant hereto, the chief grievance Coordinator for the DOC and occupied the position of Chief, Secretary's Office of Inmate Grievances and Appeals with all of the duties and responsibility of that office.

8. Defendant Nancy Smith (SMITH), at all times relevant hereto, is and was, the mailroom supervisor at HOU responsible for the inspection and disposition of all incoming inmate correspondence received at HOU.

9. Defendant Cynthia Kechisen was and is at all times relevant hereto an officer of the DOC assigned to HOU as the principal and Publication Review Committee charged with the responsibility of approving correspondence courses and reviewing questionable incoming publications.

10. Defendant George N. Patrick was and is at all times relevant hereto the Superintendent of HOU charged with the responsibility to oversee HOU and the employees working there.

11. Defendant Peggy Baughman was and is at all times relevant hereto an officer of the DOC assigned to HOU as Purchasing Agent II with the duties and

responsibility of that office.

III. PREVIOUS LAWSUITS BY PLAINTIFF

12. Plaintiff Pushinsky has filed no other lawsuits dealing with the same facts involved in this action or otherwise against the DOC.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. As required under 42 U.S.C. § 1997(e)(a) with respect to the Federal Claims hereto and 42 Pa.C.S. § 6601 et seq. with respect to both the state and Federal Claims hereto Plaintiff Pushinsky has complied with all of the provisions required by the Department of Corrections Administrative Remedy Procedure. A copy of which is appended hereto.

V. STATEMENT OF FACTS

14. On August 10, 2004, a package addressed to Plaintiff Pushinsky was delivered to HOU.

15. This package was sent from Ursinus College Biochemistry Department and contained the following; 2 sets of photo copied biochemistry materials; and 3 books--"An Introduction to Genetic Analysis", "Principles of Biochemistry", "Lecture Notebook for Lehninger Principles of Biochemistry".

16. The package was inspected by Defendant SMITH on 8/10/04.

17. An Unacceptable Correspondence Form (# 23970) was given to Plaintiff Pushinsky on 8/16/04 stating: Unauthorized enclosure, "Correspondence course -not approved /C. Kechisen."

18. On 8/16/04 Plaintiff Pushinsky submitted a request slip to Defendant Smith: In summary request stated, "Please hold everything until I can resolve this issue and find out if there is anything to send home." The response to request was "Ms. Kechisen told the mailroom that you do not have approval to receive these books. You will need to send us signed cash slips to return the items."

19. On 8/16/04 request slip sent to Defendant Cynthia Kechisen asking about Form # 23970 and stating Plaintiff Pushinsky is not taking any courses: No response to request slip.

20. On 8/17/04 request sent to Defendant Smith: Request, "package should not be a correspondence course." No response to request.

21. On 8/19/04 Plaintiff Pushinsky sent request to Counselor Zitterbart: Request, "check why defendants say that it is a correspondence course." Response "E-mailed principal on issue this date.

22. On 8/20/04 Mr. Zitterbart told Plaintiff Pushinsky that, "Ms. Kechisen E-mailed him back saying that PRC meets once a month and that PRC has to review the books.

23. Plaintiff Pushinsky filed a Grievance (# 93263) on 8/20/04 stating in summary: Plaintiff is not taking any correspondence courses; according to policy, Plaintiff does not need approval to receive textbooks; Plaintiff wants the books and any other correspondence/mail that was sent, or the full value to replace these items.

24. Grievance (# 93263) was answered by Defendant SMITH on 9/2/04 and stated the following: "All books are inspected upon arrival to the institution. Your account was checked and there is no record of the confiscated books being paid for. Also I checked with Ms. Kechisen and you did not write her a request asking for permission to receive these books prior to their being shipped to our institution. Therefore, the books were correctly confiscated and must be sent out or destroyed. Grievance denied."

25. The Initial Review Response to Grievance does not make sense and is not authorized by DOC policy: DOC policy does not require an inmate to purchase books from his account, to receive books; DOC policy does not require that an inmate get permission from the principal to receive books; Defendant SMITH's Response does not answer the grievance on the mail other than the books, on the issue that the mail is not a correspondence course, and does not hold to the reasons on Form (# 23970).

26. On 9/4/04 Plaintiff Pushinsky submitted an Appeal of Grievance (# 93263) to Defendant George N. Patrick, Superintendent, raising the issues given above in #23 and #25.

27. On 9/10/04 Plaintiff Pushinsky sent a request slip to Mr. Zitterbart: request, asking about #22 above and stating, "it has been a month"; response, "You need to write to Ms. Kechisen until she responds."

28. On 9/10/04 Plaintiff Pushinsky sent request to Defendant SMITH: request, "asking for a list of the confiscated items"; response, was the items listed above in #15.

29. On 9/16/04 Plaintiff Pushinsky sent request to Defendant Cynthia Kechisen: Request, "that the books have been in the institution for over a month and I still have not received the books nor any claim that the material contained in the books is not allowed"; Response, "the books are being denied due to security matters. You should have received a response before now."

30. On 9/23/04 Plaintiff Pushinsky sent a request slip to Defendant George N. Patrick, Superintendent: Request, "new matter in the appeal involving DC-ADM 803, page 17 and 18, 3. Criteria a. Security Issues (8)...the above criteria should not be interpreted so broadly as to require disapproval of recognized textbooks in Chemistry, ... Biochemistry is a branch of chemistry."

31. On 9/27/04 Defendant George N. Patrick, Superintendent, denied the Appeal of Grievance (# 93263), stating: "After reviewing your initial grievance dated 8/20/04 and your appeal, I find that the books were confiscated appropriately. However, I must point out that the rationales given are not the primary consideration in my decision. Upon review of DC-ADM 803 Section VI, F, 1, a, it is clear that the books did not come to us from the original source as is required by policy. Therefore, the grievance and the appeal are denied."

32. The issue of Original Source was raised for the first time by the defendants in the above response to the Appeal of Grievance; this is untimely and denies due process to Plaintiff Pushinsky.

33. The statement in #31 above, "it is clear", is false because: Unacceptable Correspondence Form (# 23970) clearly has a category for this that was not checked, "Books, magazines and newspapers must come directly from bookstore or publisher," and the policy also considers distributor or department store as an original source; Defendants, SMITH and Cynthia Kechisen, specifically stated that Plaintiff Pushinsky does not have approval to take a correspondence course and did not write Ms. Kechisen a request asking permission to receive the books prior to their being shipped to the institution--implicitly stating if plaintiff would have met these conditions the books would be allowed in, hence, colleges are considered an original source; colleges were considered an original source for other inmates before, and after, 8/10/04.

34. On 9/29/04 Plaintiff Pushinsky filed an Appeal, of Defendant George N. Patrick's decision, to Defendant BURKS, stating in summary: the same arguments from grievance and appeal; and also, "Defendants have changed their rationale at each stage of the grievance process. Colleges are original sources."

35. Plaintiff Pushinsky spoke to Defendant Jeffrey A. Beard when he visited HOU, in November, about not receiving a reply yet (more than 50 days) from Defendant BURKS.

36. On 11/29/04 Plaintiff Pushinsky received Defendant BURKS' Final Review of Grievance (# 93263), dated 11/23/04, stating in summary: "this office upholds the responses provided by staff at the institutional level. In accordance with DC ADM 803 VI.F.1.a., all publications must be received from original source. In this case, books from Ursinus College are not considered the original source and are a security risk. The responses provided at the institutional level are appropriate and in accordance with DOC policies and procedures. Accordingly, your appeal to final review must be denied."

37. On 11/30/04 Plaintiff Pushinsky sent request slips to Defendants SMITH and George N. Patrick, stating: Request, "going to appeal to Commonwealth Court, please hold the books and correspondence until the outcome by the court;" Response, "Books and all correspondence will be held in the mailroom until the appeal process is completed as outlined in DC-ADM 803 § VI(F)4b."

38. On 12/1/04 Plaintiff Pushinsky sent request slips to Defendants SMITH, George N. Patrick, Cynthia Kechisen, BURKS, and Jeffrey A. Beard stating: Request, "to get the photocopied pages because they do not have to come from the original source, do not fall under DC-ADM 803 VI.F.1.a.;" Response from SMITH, "Per Ms. Kechisen, all books, photocopied pages, etc do not have a correspondence course approval and were rightly confiscated. They will be held in the mailroom pending outcome of your appeal."

39. Response from Defendant Peggy Baughman to request (in #38): "Inmate Handbook Supplement, § V(B)1 para 6 correspondence courses need to be requested and approved through the School Principal. In researching this issue, you have not obtained the required approvals from Ms. Kechisen; therefore, all books, publications, or any course-related material (which includes the photocopied pages) have been correctly confiscated."

40. On 12/15/04 Plaintiff Pushinsky filed another grievance (#104703) stating: "the 2 sets of photocopies do not fall under DC-ADM 803 VI.F.1.a., and can come from any source, and I am not taking a correspondence course;" grievance rejected as having been addressed already.

41. On 12/20/04 Plaintiff Pushinsky received a letter, as a result of the conversation mentioned above (#35), from Defendant Jeffrey A. Beard, Secretary of Corrections, stating in summary: "was not original source" and "However, it

has been determined at the Central Office level that although organizations may not donate books to individual inmates, they may donate books to the institution Library after receiving permission from Library staff. Inmates may then borrow the donated books as they would any other nonreference book in the Library inventory."

42. On 12/14/04 Defendant BURKS responded to the above (#38) mentioned request slip: Response, "You have already received final review on this issue."

43. On 12/27/04 Plaintiff Pushinsky received a response from, above (#38) mentioned, request to Defendant Jeffrey A. Beard, which was forwarded to Defendant George N. Patrick for response: "The Inmate Handbook Supplement for HOU clearly indicates in SV(B)1,para.8, that all correspondence courses through approved post-secondary schools shall be requested through the School Principal. Inquiries made with HOU education staff reveal that you made no formal request to participate in this correspondence course. Upon further investigation into the photocopied pages you refer to, it has been determined that these sheets were part of the syllabus for the course. These pages were withheld because the course was not approved through the School Principal. Furthermore, the pages may contain personal information from a previous student or professor that may raise security concerns."

44. Other inmates have received books from, noncorrespondence course, colleges; at a time when HOU staff were not letting inmates receive books from other than original source, therefore colleges are an original source.

45. Inmate Christopher Obst received, a total of more than 500 books, some syllabuses and photocopied materials, from more than, 8 colleges (he was not taking correspondence courses at these colleges), during his incarceration at HOU: Christopher told Plaintiff Pushinsky this in the summer of 2004; Christopher's old cellmate and other inmates told Plaintiff Pushinsky similar information about Christopher; Plaintiff Pushinsky was shown, from 1999-2004, by Christopher syllabuses and other photocopied materials (test, questions, books, etc.), and numerous books from these colleges.

46. Around November 2004 an inmate received books from a college (CRESP-Durland Alternatives Library, 127 Anabel Taylor Hall, Ithaca, NY 14853).

COUNT ONE: UNCONSTITUTIONAL SEIZURE OF PROPERTY

47. Plaintiff Pushinsky realleges and incorporates by reference his

allegations in paragraphs 1 through 46 as if fully restated herein.

48. Defendant SMITH, while working in her official capacity as an employee of the DOC and as the mailroom supervisor at HOU, through negligence, intentionally caused injury to Plaintiff Pushinsky by confiscating his property, after wrongly concluding that the property was part of a correspondence course and/or that he was taking the course, when the property had been delivered to him through the United States mail.

49. Defendant SMITH intentionally, maliciously, and willfully caused injury to Plaintiff Pushinsky by continuing to withhold his property after she was notified that the property was not a correspondence course and Plaintiff Pushinsky was not taking any course.

50. Defendant SMITH intentionally and knowingly disregarded DOC regulations governing the custody of incoming inmate mail, publications, and property, as seen in her response to grievance (#24), thus Defendant SMITH was not acting in good faith in the course of her duties.

51. Defendant SMITH intentionally, maliciously, and willfully disregarded DOC regulations governing incoming inmate mail, and violated Plaintiff Pushinsky's constitutional rights, when she failed to deliver the photocopied pages to him (#38), which can come from any source.

52. Defendant SMITH knew or should have known, that Plaintiff Pushinsky had a right to receive his property, since she had delivered (#44-46) similar mail to other inmates.

53. Defendant Cynthia Kechisen, while working in her official capacity as an employee of the DOC and as the Principal at HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by wrongly continuing to claim the property was part of a correspondence course, even though she was notified that Plaintiff Pushinsky was not taking a correspondence course and the property was not from a correspondence course.

54. Defendant Cynthia Kechisen, while working in her official capacity as an employee of the DOC and as a member of the Publications Review Committee at HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by failing to rule on the publications and photocopied pages within 10 days, and by failing to properly communicate the Committee's decisions to Plaintiff Pushinsky.

55. Defendant Cynthia Kechisen intentionally and knowingly disregarded DOC regulations governing incoming publications and mail, as seen above, from her

actions and communications with Defendant SMITH, other employees at HOU, and Plaintiff Pushinsky, thus Defendant Cynthia Kochisen was not acting in good faith in the course of her duties.

56. Defendant George N. Patrick, while working in his official capacity as an employee of the DOC and as the Superintendent of HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by denying the appeal of the grievance, and by raising, for the first time, as part of his rationale, that college departments are not considered an original source.

57. Defendant George N. Patrick, while working in his official capacity as an employee of the DOC and as the Superintendent of HOU, intentionally, maliciously, and willfully caused injury to Plaintiff Pushinsky by continuing to withhold from Plaintiff Pushinsky the photocopied pages, and claiming there could be personal information in the photocopies, that may be a security risk; this contradicts his rationale of not an original source, since these are not publications and do not have to come from the original source.

58. Defendant George N. Patrick intentionally and knowingly disregarded DOC regulations governing incoming inmate mail, publications, and property, and grievance process, as seen in his responses to appeal (#31) and correspondence (#43), thus defendant was not acting in good faith in the course of his duties.

59. Defendant Peggy Baughman, while working in her official capacity as an employee of the DOC and as Purchasing Agent II at HOU, intentionally, maliciously, and willfully caused injury to Plaintiff Pushinsky by wrongly concluding the photocopied pages were from a correspondence course, after being notified that the property was not a correspondence course and Plaintiff Pushinsky was not taking any course.

60. Defendant Peggy Baughman intentionally and knowingly disregarded DOC regulations governing the custody of incoming inmate mail, as seen by her response to request slip (#39), thus Defendant Peggy Baughman was not acting in good faith in the course of her duties.

61. Defendant BURKS, while working in her official capacity as an employee of the DOC and as the Chief Grievance Coordinator, intentionally, maliciously, and willfully caused injury to Plaintiff Pushinsky by denying his final appeal of the grievance and determining the correspondence was properly confiscated.

62. Defendant BURKS intentionally, maliciously, and willfully caused injury to Plaintiff Pushinsky by failing to order the return of the photocopies after she was notified that her final review did not address these pages, since

the photocopies do not have to come from the original source.

63. Defendant BURKS intentionally and knowingly disregarded DOC regulations governing incoming inmate mail, publications, and property, and grievance procedure, as seen from her responses (#36 & 42), thus defendant was not acting in good faith in the course of her duties.

64. Defendant Jeffrey A. Beard, while working in his official capacity as an employee of the DOC and Secretary of Corrections, through negligence, intentionally caused injury to Plaintiff Pushinsky by failing to order that the property be given to Plaintiff Pushinsky.

65. Defendant Jeffrey A. Beard intentionally, maliciously, and knowingly disregarded DOC regulations governing the custody of incoming inmate mail, publications, and property, and the grievance process, thus defendant was not acting in good faith in the course of his duties.

66. Defendant DOC failed to remedy or take responsibility for the negligent, malicious, and willful misconduct of its employees, Defendants SMITH, BURKS, Ms. Kochisen, George N. Patrick, Peggy Bougman, and Jeffrey A. Beard.

67. Defendant DOC failed to hold the other Defendants accountable for intentionally and knowingly disregarding DOC regulations governing the custody of incoming inmate mail/property.

68. Defendant DOC through negligence, maliciously, and willfully caused injury to Plaintiff Pushinsky by failing to deliver the books and photocopied pages to him.

69. Defendant DOC disregarded its own regulations in wrongly determining that Plaintiff Pushinsky's property was part of a correspondence course and that he was taking this course, thus DOC was not acting in good faith in performing its duties.

70. Defendant DOC is responsible and accountable for the actions and conduct of its employees while acting in their official capacities on the job yet failed to take responsibility and accountability for the negligent, intentional, malicious actions and willful misconduct of its employees.

71. All of the Defendants acted negligently, and/or maliciously, and/or willfully in disregarding DOC regulations that specifically entitle Plaintiff Pushinsky to delivery of his incoming mail/property, protection against the arbitrary confiscation of this mail/property, and protection from the continued withholding of this mail/property based on false assumptions, thus, Defendants were not acting in good faith and such disregard was intentional, malicious, and

willful and resulted in actual injury to Plaintiff Pushinsky in that he does not have possession of the mail/property.

72. Wherefore, Plaintiff Robert C. Pushinsky prays for a judgement in his favor, including the release of his mail/property to him, Declaratory relief, and compensatory and punitive damages in an amount sufficient to compensate him for the negligent confiscation and/or destruction of his property and prevent any future malicious and willful misconduct together with a reasonable attorney fee and costs and such additional relief as the court may deem just and proper.

COUNT TWO: WITHHOLDING PROPERTY WITHOUT DUE PROCESS

73. Plaintiff Pushinsky realleges and incorporates by reference his allegations in paragraphs 1 through 72 as if fully restated hereina.

74. Defendant Cynthia Kechisen, while working in her official capacity as an employee of the DOC and as the Principal/P.R.C. at HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by not answering his first request slip and by not conveying correct information to Defendant SMITH.

75. Defendant SMITH, while working in her official capacity as an employee of the DOC and the mailroom supervisor at HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by not giving the books and photocopies to him, even though she has given similar mail to other inmates in the past, and by not addressing his issues on the grievance, and by not properly notifying him of the reasons for confiscation.

76. Defendant George N. Patrick, while working in his official capacity as an employee of the DOC and as the Superintendent of HOU, through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky and violated his Due Process Rights by raising, in answer to appeal of grievance, that the books did not come from the original source, without properly notifying him of this at time of confiscation, and in allowing Defendant SMITH to be the grievance officer when confiscation reasons came from Defendant Kechisen.

77. Defendant DOC through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky through denial of his Due Process Rights by allowing Defendant SMITH to be the Grievance Officer, not following procedure in confiscation of mail/property, by allowing Defendants to act arbitrarily, and by allowing new issues to be raised in the answer to appeal of the grievance.

78. Defendant DOC through negligence, intentionally, and maliciously caused injury to Plaintiff Pushinsky by allowing the Defendants to withhold the mail/property, when they implicitly stated that if he had got approval the books and photocopies would have been given to him, making college an original source.

79. Wherefore, Plaintiff Robert C. Pushinsky prays for a judgement in his favor, including the release of his mail/property to him, Declaratory relief, and compensatory and punitive damages in an amount sufficient to compensate him for the negligent confiscation and/or destruction of his property and prevent any future malicious and willful misconduct together with a reasonable attorney fee and costs and such additional relief as the court may deem just and proper.

Respectfully submitted,
Robert C. Pushinsky
Robert C. Pushinsky
Plaintiff, pro se
Inst. # 04-8702
P.O. Box 1000
Mountdale, PA 16693-1000

I Robert C. Pushinsky, above named, declare under penalty of perjury pursuant to Title 18 Pa.C.S. § 4904 that the foregoing averments and attached documents are true and correct to the best of my information and belief.

Executed this 2nd day of March, 2005.

Robert C. Pushinsky
Robert C. Pushinsky

CERTIFICATE OF SERVICE

March 2 R.E.P.
I hereby certify that on ~~February 28~~, 2005, a true and correct copy of the
Complaint was served upon the persons and in the manner indicated below.

Service by first class mail, postage prepaid addressed as follows:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
2520 Lisburn Road, P.O. Box 598
Camp Hill, PA 17001-0598

Jeffrey A. Beard
Secretary of Corrections
2520 Lisburn Road, P.O. Box 598
Camp Hill, PA 17001-0598

Sharon M. Burks
Secretary's Office of
Inmate Grievance & Appeals
2520 Lisburn Road, P.O. Box 598
Camp Hill, PA 17001

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
624 Irvis Office Building
Harrisburg, PA 17120

Service by interdepartmental mail (prisoner mailbox with attached Form DC-135A):

Nancy K. Smith Mailroom Supervisor

George N. Patrick Superintendent

Ms. Kechisen Principal/P.R.C.

Peggy Baughman Purchasing Agent II

Robert C. Pushinsky
pro se
Robert C. Pushinsky
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

X

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
23 MAY 2005 14 43

**RESPONDENTS' ANSWER AND NEW
MATTER WITH AFFIRMATIVE DEFENSES
TO THE PETITION FOR REVIEW**

Respondents, by and through their attorney, John J. Talaber, Assistant Counsel, Governor's Office of General Counsel, pursuant to this Honorable Court's order dated May 18, 2005, hereby answer and raise as new matter their affirmative defenses as follows:

ANSWER:

I. JURISDICTION AND VENUE

1. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that a respondent in this civil action is the Pennsylvania Department of Corrections ("Department") that is an executive branch administration agency of the Commonwealth's government. The Respondents **ADMIT** that Secretary of the Department, Jeffrey A. Beard, Ph.D., is a "Commonwealth Officer" acting in his official capacity pursuant to 42 Pa.C.S.A. § 761. The

Respondents **ADMIT** that the Department's Chief Grievance Officer, Sharon M. Burks, is a "Commonwealth Officer" acting in her official capacity pursuant to 42 Pa.C.S.A. § 761. The Respondents **DENY** that respondents: (1) Nancy K. Smith; (2) Cynthia Kechisen; (3) George Patrick; and (4) Peggy Baughman are "Commonwealth Officers" pursuant to 42 Pa.C.S.A. § 761. The remaining statements of this paragraph constitute other legal conclusions to which a response is not required; therefore, pursuant to Pa. R.A.P. 1517 and Pa.R.C.P. No. 1029(d), they are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

2. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the State Correctional Institution at Houtzdale ("SCI-Houtzdale") is a subdivision of the Department. The Respondents **ADMIT** that as a matter of law the Department's principal office is deemed to be Dauphin County. The remaining statements of this paragraph constitute legal conclusions to which responses are not required; therefore, pursuant to Pa.R.C.P. No. 1029(d), the statements are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
3. **DENIED**. The statement of this paragraph is a legal conclusion to which a response is not required; therefore, pursuant to Pa.R.C.P. No. 1029(d), the

statement is deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

II. PARTIES

4. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Petitioner is Robert C. Pushinsky. The Respondents **ADMIT** that the Petitioner is in the Department's custody under institution number DU-8702. The Respondents **ADMIT** that the Petitioner is (and was during relevant times in the petition) incarcerated at SCI-Houtzdale. The Respondents **DENY** that SCI-Houtzdale is located on State Route 2007, Houtzdale, Pennsylvania; by way of further response, the mailing address for SCI-Houtzdale is 209 Institution Drive, P.O. Box 1000, Houtzdale, PA 16698-1000.
5. **ADMITTED**. The Respondents **ADMIT** that the Department is responsible for operating the state correctional institutions in the Commonwealth. The Respondents **ADMIT** that the Department's Central Office is located at 2520 Lisburn Road, Camp Hill, Pennsylvania 17001-0598.
6. **ADMITTED**. The Respondents **ADMIT** that respondent Beard is (and was at all relevant times) the Department's Secretary. The Respondents **ADMIT** that the Governor appoints the Department's Secretary position, and the Secretary is responsible for overseeing the Department's operation.

7. **ADMITTED.** The Respondents **ADMIT** that respondent Sharon M. Burks is (and was at all relevant times) the Department's Secretary's Office of Inmate Grievances and Appeals ("SOIGA") Chief Grievance Officer.
8. **ADMITTED.** The Respondents **ADMIT** that respondent Nancy Smith is (and was at all relevant times) the mailroom supervisor at SCI-Houtzdale responsible for the inspection and disposition of all inmate correspondence received at SCI-Houtzdale.
9. **ADMITTED.** The Respondents **ADMIT** that respondent Cynthia Kechisen is (and was at all relevant times) hereto as the Principal at SCI-Houtzdale. The Respondents **ADMIT** that respondent Kechisen is (and was at all relevant times) on the SCI-Houtzdale Publications Review Committee charged with the responsibility of approving correspondence courses and reviewing questionable incoming publications.
10. **ADMITTED.** The Respondents **ADMIT** that respondent George N. Patrick is (and was at all relevant times) the Superintendent at SCI-Houtzdale responsible to oversee the employees who work there.
11. **ADMITTED.** The Respondents **ADMIT** that respondent Peggy Baughman is (and was at relevant times) employed at SCI-Houtzdale as a Purchasing Agent II with the duties and responsibility of that position.

III. PREVIOUS LAWSUITS BY PETITIONER

12. **DENIED.** The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, pursuant to Pa.R.C.P. No. 1029(c). The averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Petitioner exhausted his available Department of Corrections remedies pursuant to Policy DC-ADM 804 for the claims raised in this petition. The remaining statements at this paragraph constitute legal conclusions to which a response is not required; therefore, pursuant to Pa.R.C.P. 1029(d), they are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

V. STATEMENT OF FACTS

14. **ADMITTED.** The Respondents **ADMIT** that a package addressed to Petitioner Pushinsky was delivered to SCI-Houtzdale on August 10, 2004.

15. **ADMITTED.** The Respondents **ADMIT** that the label on the August 10, 2004 package stated that it was sent from: "Ursinus College, Biology Department, P.O. Box 1000, Collegeville, PA 19426." The Respondents

ADMIT that the package contained: (A) Two (2) photocopies of Biochemistry materials; (B) One (1) book titled "An Introduction to Genetic Analysis;" (C) One (1) book titled "Principles of Biochemistry;" and (D) one (1) book titled "Lecture Notebook for Lehninger Principles of Biochemistry."

16. **ADMITTED.** The Respondents **ADMIT** that Mailroom Supervisor Smith inspected the package sent to the Petitioner on August 10, 2004.
17. **ADMITTED.** The Respondents **ADMIT** that a Department "Unacceptable Correspondence Form" number 23970 was given to Petitioner Pushinsky on August 16, 2004 that had the "Unauthorized enclosure" box checked. The Respondents **ADMIT** that the line next to the "Unauthorized enclosure" box stated on it "correspondence course – not approved/C. Kechisen."
18. **ADMITTED.** The Respondents **ADMIT** that on August 16, 2004, the Petitioner wrote an "Inmate's Request to Staff Member" directed to Respondent Mailroom Supervisor Smith. The Respondents **ADMIT** that in summary, the Petitioner's Request was to please hold everything (the package) until he could resolve the issue and to determine if there was anything he could send home. The Respondents **ADMIT** that Respondent Smith responded to the Petitioner's request stating, "Ms. Kechisen told the mailroom that you do not have approval to receive these books. You will

need to send us signed cash slips to return the items." The Respondents **ADMIT** that Respondent Smith sent her response to the Petitioner on August 18, 2004.

19. **DENIED.** The Respondents **DENY** that on August 16, 2004, the Petitioner sent a request slip to Respondent Principal Kechisen concerning Form Number 23970. Strict proof thereof is demanded at time of trial if relevant.
20. **ADMITTED.** The Respondents **ADMIT** that in the Petitioner's August 17, 2004 request to Respondent Mailroom Supervisor Smith, he indicated that the package should not be considered a correspondence course. The Respondents **ADMIT** that the Petitioner's aforementioned request form was not answered.
21. **ADMITTED.** The Respondents **ADMIT** that on August 19, 2004, the Petitioner sent a request to his Unit Counselor, Mr. Zitterbart, requesting that he check why the Respondents deemed his package was a correspondence course. The Respondents **ADMIT** that Mr. Zitterbart emailed Respondent Principal Kechisen that same day regarding the Petitioner's question.
22. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Principal Kechisen emailed Mr. Zitterbart back on August 19, 2004. The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a

belief as to the truth of the Petitioner's averments concerning the conversation between himself and Mr. Zitterbart on August 20, 2004, therefore, pursuant to Pa.R.C.P. No. 1029(c), the averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

23. **ADMITTED.** The Respondents **ADMIT** that on August 20, 2004, the Petitioner wrote a Department Official Inmate Grievance, pursuant to Department Policy DC-ADM 804. The Respondents **ADMIT** that on August 23, 2004, SCI-Houtzdale Grievance Coordinator Doretta Chencharick received the Petitioner's grievance, and assigned it number 93263. The Respondents **ADMIT** that the Petitioner stated in his grievance that he was not taking correspondence courses. The Respondents **ADMIT** that in his grievance he requested the books and correspondence, or the full value of what it would cost to replace the books and mail. The Respondents **ADMIT** that in his grievance he argued that Department policy does not require him to receive approval for the textbooks.
24. **ADMITTED.** The Respondents **ADMIT** that Respondent Mailroom Supervisor Smith responded to Grievance number 93263 as the Grievance Officer on September 2, 2004. The Respondents **ADMIT** that Respondent Smith's response to this grievance stated

All books are inspected upon arrival to the institution. Your account was checked and there is no record of the confiscated books being paid for. Also I checked with Ms. Kechisen and you did not write her a request asking for permission to receive these books prior to their being shipped to our institution. Therefore, the books were correctly confiscated and must be sent or destroyed. Grievance **DENIED**.

25. **DENIED.** Strict proof thereof is demanded at time of trial if relevant.
26. **ADMITTED.** The Respondents **ADMIT** that on September 4, 2004 the Petitioner wrote his appeal of grievance number 93263 to Respondent Superintendent Patrick. The Respondents **ADMIT** that the arguments and issues made in paragraphs 23 and 25 of the Petition were made in grievance number 93263.
27. **DENIED.** Strict proof thereof is demanded at time of trial if relevant.
28. **ADMITTED.** The Respondents **ADMIT** that on September 10, 2004, the Petitioner sent Respondent Mailroom Supervisor Smith a request asking for the list of his confiscated package. The Respondents **ADMIT** that Respondent Smith responded as stated in Respondents' answer, paragraph 15.
29. **ADMITTED.** The Respondents **ADMIT** that on September 16, 2004, the Petitioner sent a request to Respondent Principal Kechisen that stated in relevant part: "[t]he books have been in the institution since 8/10/04. I still have not received the books nor any claim that the material contained in the

books is not allowed.” The Respondents **ADMIT** that Respondent Principal Kechisen’s response (on September 17, 2004) was “Mr. Zitterbart is not aware that we meet weekly. Your books are being **DENIED** due to security matters. You should have [received] a response before now.”

30. **ADMITTED.** The Respondents **ADMIT** that on September 23, 2004, the Petitioner sent a request slip to Respondent Superintendent Patrick, which in relevant part, informed him of new matter concerning his appeal of Grievance number 93263.
31. **ADMITTED.** The Respondents **ADMIT** that on September 27, 2004, Respondent Superintendent Patrick **DENIED** the Petitioner’s appeal of the Grievance Officer’s response concerning Grievance number 93263. The Respondents **ADMIT** that Respondent Superintendent Patrick’s response stated:

After reviewing your initial grievance dated 8/20/04 and your appeal, I find that the books were confiscated appropriately. However, I must point out that the rationales given are not the primary consideration in my decision. Upon review of DC-ADM 803, Section VI, F, 1, a, it is clear that the books did not come to us from the original source as is required by policy. Therefore, the grievance and the appeal are **DENIED**.

32. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the issue of original source was raised by Respondent Superintendent Patrick for the first time in his response to the Petitioner’s appeal of Grievance

number 93263. The remaining statement of this paragraph constitutes a conclusion of law to which a response is not required; therefore, pursuant to Pa.R.C.P. No. 1029(c), the statement is deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

33. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the SCI-Houtzdale Unacceptable Correspondence Form, number 23970, has a category stating that "Books, magazines and newspapers must come directly from bookstore or publisher" and the box next to this category was not marked. The remaining statements of this paragraph are **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
34. **ADMITTED**. The Respondents **ADMIT** that on September 29, 2004, the Petitioner appealed Respondent Superintendent Patrick's decision that upheld the Grievance Officer's decision for grievance number 93263. The Respondents **ADMIT** that the Petitioner raised the issues made in this paragraph in his appeal to SOIGA.
35. **DENIED**. The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the Petitioner's averments that he spoke with Respondent Secretary Beard during a visit to SCI-Houtzdale in November 2004, concerning his grievance number 93263; therefore, pursuant to Pa.R.A.P.

1517 and Pa.R.C.P. No. 1029(c), the averments are deemed **DENIED**.

Strict proof thereof is demanded at time of trial if relevant.

36. **ADMITTED.** The Respondents **ADMIT** that on or about November 29, 2004 the Petitioner received Respondent Chief Grievance Officer Sharon M. Burks' decision that upheld the Superintendent's, and the Grievance Officer's responses concerning grievance number 93263. The Respondents **ADMIT** that Respondent Chief Grievance Officer Sharon M. Burks cited to DC-ADM 803 VI. F. 1. a. stating that "all publications must be received from the original source." The Respondents **ADMIT** that Respondent Chief Grievance Officer Sharon M. Burks' response also stated in relevant part that "[i]n this case, books from Ursinus College are not considered the original sources and are considered a security risk. You have to have them returned to [the] sender or destroyed Accordingly, your appeal to final review must be **DENIED**."

37. **ADMITTED.** The Respondents **ADMIT** that on November 30, 2004, the Petitioner sent request slips to Respondent Superintendent Patrick and Respondent Mailroom Supervisor Smith. The Respondents **ADMIT** that the Petitioner requested that his "books/correspondence" not be destroyed pending the outcome of his appeals.

38. **ADMITTED.** The Respondents **ADMIT** that on December 1, 2004, the Petitioner sent request slips to Respondent Superintendent Patrick and Respondent Mailroom Supervisor Smith requesting two (2) sets of the photocopied pages that were in the correspondence from Ursinus College, and that the Petitioner cited to DC-ADM 803 VI. F. 1.a. The Respondents **ADMIT** that on December 7, 2004, Respondent Mailroom Supervisor Smith responded to the Petitioner's December 1, 2004 request stating, “[p]er Ms. Kechisen, all books, photographed pages, etc do not have a correspondence course approval and were rightly confiscated. They will be held in the mailroom pending the outcome of your appeal.” The Respondents **ADMIT** that the Petitioner sent copies of the request slips to Respondents Beard and Burks via correspondence dated December 3, 2004.

39. **ADMITTED.** The Respondents **ADMIT** that Respondent Peggy Baughman responded to the Petitioner's December 2, 2004 request to Respondent Superintendent Patrick on December 6, 2004, stating “[p]lease refer to your Inmate Handbook Supplement, specifically, Section V(B)1 paragraph 6 whereby it stipulates that correspondence courses need to be requested and approved through the School Principal. In researching this issue, you have not obtained the required approvals from Ms. Kechisen;

therefore, all books, publications, or any course-related material (which includes the photocopied pages) have been correctly confiscated.”

40. **ADMITTED.** The Respondents **ADMIT** that on December 15, 2004, the Petitioner filed a grievance that stated in relevant part that “the 2 sets of photocopies do not fall under DC-ADM 803 VI.F.1.a., and can come from any source, and I am not taking a correspondence course.” The Respondents **ADMIT** that this grievance was assigned number 104703. The Respondents **ADMIT** that on December 16, 2004, SCI-Houtzdale Grievance Coordinator Ms. Chencharick rejected grievance number 104703, noting that the issue was already addressed in grievance number 93263.
41. **ADMITTED.** The Respondents **ADMIT** that on or about December 20, 2004, the Petitioner received a letter from Respondent Secretary Beard, dated December 14, 2004. The Respondents **ADMIT** that Respondent Beard stated in the letter that the response to grievance number 93263, the Petitioner was “advised that since Ursinus College was not considered the original source of the books in question, they would have to be returned to the sender or destroyed.” The Respondents **ADMIT** that Secretary Beard also stated in the letter that “it has been determined at the Central office level that although organizations may not donate books to individual inmates, they may donate books to the institution Library after receiving

permission from Library staff. Inmates may then borrow the donated books as they would any other non-referenced book in the Library inventory.”

42. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that on December 14, 2004, the SOIGA through Assistant Chief Grievance Coordinator Kristen Reisinger sent the Petitioner a grievance rejection form stating that he has “already received final review on this issue” referencing grievance number 93263. The Respondents **DENY** that Respondent Burks sent this grievance rejection form. Strict proof thereof is demanded at time of trial if relevant.

43. **ADMITTED**. The Respondents **ADMIT** that on November 3, 2004, the Petitioner sent correspondence to Respondent Secretary Beard concerning the issues raised in his grievance number 93263. The Respondents **ADMIT** that Respondent Superintendent Patrick responded to the correspondence addressed to Secretary Beard on December 23, 2004. The Respondents **ADMIT** that Respondent Superintendent Patrick’s response stated, in relevant part, that:

The Inmate Handbook Supplement for SCI-Houtzdale clearly indicates in Section V(B)1, paragraph 8, that all correspondence courses through approved post-secondary schools shall be requested through the School Principal. Inquiries made with SCI-Houtzdale education staff reveal that you made no formal request to participate in this correspondence course. Upon further investigation into the photocopied pages you refer to, it has been determined that these

sheets were part of the syllabus for the course. These pages were withheld because the course was not approved through the School Principal. Furthermore, the pages may contain personal information from a previous student or professor that may raise security concerns.

44. **DENIED.** The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the Petitioner's averments in this paragraph; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(c), the averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
45. **DENIED.** The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the Petitioner's averments in this paragraph; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(c), the averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
46. **DENIED.** The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the Petitioner's averments in this paragraph; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(c), the

averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

COUNT ONE: UNCONSTITUTIONAL SEIZURE OF PROPERTY

47. **DENIED**. The statements of this paragraph do not require a response; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), the statements are deemed **DENIED**.
48. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Smith is an employee of the Department, and the Mailroom Supervisor at SCI-Houtzdale. The Respondents **ADMIT** that the correspondence at issue was delivered by the United States Mail. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
49. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Petitioner's correspondence and publications at issue were withheld from him. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

50. **DENIED.** The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

51. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Petitioner's correspondence and publications at issue were withheld from him. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

52. **DENIED.** The Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the Petitioner's averments that Respondent Smith delivered "similar mail to other inmates;" therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. 1029(c), the averments are deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant. Additionally, the remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

53. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Cynthia Kechisen is an employee of the Department working as the Principal at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

54. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Cynthia Kechisen is an employee of the Department, and is a member of the Publications Review Committee at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

55. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

56. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent George N. Patrick is a Department employee and is the Superintendent at SCI-Houtzdale. The remaining statements of this

paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

57. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent George N. Patrick is a Department employee, and is the Superintendent at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
58. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
59. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Peggy Baughman is a Department employee working as a Purchasing Agent II at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No.

1029(d), do not require responses, and are therefore deemed **DENIED**.

Strict proof thereof is demanded at time of trial if relevant.

60. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
61. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Sharon Burks is a Department employee, and is the SOIGA Chief Grievance Officer. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
62. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
63. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

64. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Jeffrey A. Beard, Ph.D., is an employee of the Department, and is the Secretary of the Department. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

65. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

66. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Department is a respondent in this civil action. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

67. **DENIED**. The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

68. **DENIED.** The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

69. **DENIED.** The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

70. **DENIED.** The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

71. **DENIED.** The statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

72. **DENIED.** The statements of this paragraph concern the relief that the petitioner requests from this Honorable Court through his civil action against the Respondents; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), a response is not required.

COUNT TWO: WITHHOLDING PROPERTY WITHOUT DUE PROCESS

73. **DENIED.** The statements of this paragraph do not require a response; therefore, pursuant to Pa.R.A.P. 12517 and Pa.R.C.P. No. 1029(d), the statements are deemed **DENIED**.

74. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Cynthia Kechisen is an employee of the Department, working as the Principal at SCI-Houtzdale, and during relevant times in this civil action, was part of the Publication Review Committee at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

75. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent Smith is an employee of the Department, and the Mailroom Supervisor at SCI-Houtzdale. Further, the Respondents, at this time and after a reasonable preliminary investigation, are without knowledge or information sufficient to form a belief as to the truth of the Petitioner's averments that Respondent Smith delivered "similar mail to other inmates in the past;" therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. 1029(c), the averments are deemed **DENIED**. Strict proof thereof is demanded at time of

trial if relevant. Finally, the remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

76. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that Respondent George N. Patrick is a Department employee, and is the Superintendent at SCI-Houtzdale. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
77. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Department is a respondent in this civil action. The remaining statements of this paragraph constitute conclusions of law which, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.
78. **ADMITTED** in part and **DENIED** in part. The Respondents **ADMIT** that the Department is a respondent in this civil action. The remaining statements of this paragraph constitute conclusions of law which, pursuant to

Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), do not require responses, and are therefore deemed **DENIED**. Strict proof thereof is demanded at time of trial if relevant.

79. **DENIED**. The statements of this paragraph concern the relief that the petitioner requests from this Honorable Court through his civil action against the Respondents; therefore, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1029(d), responses are not required.

NEW MATTER

The Respondents, pursuant to Pa.R.A.P. 1517 and Pa.R.C.P. No. 1030, plead the following affirmative defenses as new matter to the petition for review:

FIRST AFFIRMATIVE DEFENSE

The Respondents acted at all times within the scope of their authority, and without any actual or imputed knowledge that their actions violated any of the Petitioner's constitutional rights; therefore, the Respondents are immune from suit.

SECOND AFFIRMATIVE DEFENSE

The Respondents at all times were acting in reliance upon valid federal and state laws and regulations.

THIRD AFFIRMATIVE DEFENSE

The Respondents assert each and every defense available to it under the existing Civil Rights Act.

FOURTH AFFIRMATIVE DEFENSE

The acts or omissions of the Respondents that are alleged to constitute negligent or more culpable conduct were not substantial causes or factors in the condition suffered by the Petitioner.

FIFTH AFFIRMATIVE DEFENSE

The Respondents' conduct was neither negligent nor culpable.

SIXTH AFFIRMATIVE DEFENSE

The Petitioner's state law claims are barred by sovereign immunity and are not waived in any of the exceptions thereto. 1 Pa. C.S. §2310; 42 Pa. C.S. §8522.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that immunity has been waived with respect to any of Petitioner's claims, the Respondents assert all defenses to and limitations upon those claims which are or may hereinafter be set forth. 42 Pa. C.S. §§8522-8528.

EIGHTH AFFIRMATIVE DEFENSE

The Respondents are entitled to official immunity from the Petitioner's claims.

NINTH AFFIRMATIVE DEFENSE

At all times relevant hereto, any actions or inactions of the Respondents were done within the scope of their authority, in good faith, and without malice.

TENTH AFFIRMATIVE DEFENSE

The Respondents are entitled to objective, good faith immunity from Petitioner's claims, and have not violated any rights and/or clearly established rights of Petitioner.

ELEVENTH AFFIRMATIVE DEFENSE

Whatever actions or inactions committed by the Respondents that may have caused loss to the Petitioner (but are expressly DENIED) was justified.

TWELFTH AFFIRMATIVE DEFENSE

The Petitioner consented to any actions or inactions committed by the Respondents; therefore, the Petitioner's claims against the Respondents are barred.

THIRTEENTH AFFIRMATIVE DEFENSE

Any actions or inactions committed by the Respondents were done pursuant to duties required by statute, regulation or directive; therefore, the Respondents are immune from suit.

FOURTEENTH AFFIRMATIVE DEFENSE

Any actions or inactions committed by the Respondents were matters within the discretion granted to the Respondents by statute, regulation or directive; therefore, the Respondents are immune from suit.

FIFTEENTH AFFIRMATIVE DEFENSE

The Petitioner's claims for declaratory and injunctive relief are moot.

SIXTEENTH AFFIRMATIVE DEFENSE

The petition for review fails to state a claim or cause of action upon which relief may be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

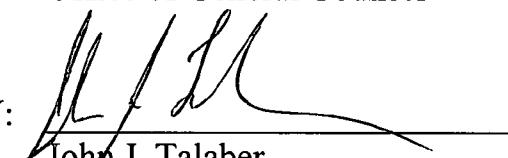
The claims asserted in the petition for review are barred by the doctrines of *lis pendens*, *res judicata* and *collateral estoppel*.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Respondents affirmatively plead any other matter constituting an avoidance or affirmative defense to the claims raised in Petitioner's petition of review.

WHEREFORE, for the reasons stated above, the Respondents respectfully request that this Honorable Court dismiss the petition for review with prejudice.

Respectfully submitted,
Office of General Counsel

BY: 

John J. Talaber
Assistant Counsel
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444
Attorney Id. No. 83279

Dated: May 23, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

ATTORNEY VERIFICATION

I, John J. Talaber, Esquire, verify that I am the attorney for the Respondents.

I am authorized to make this verification on behalf of my clients. The statements

made in the attached *Respondents' Answer and New Matter With Affirmative*

Defenses To The Petition For Review are essentially conclusions of law, facts of

records, or otherwise within my personal knowledge, information or belief. I

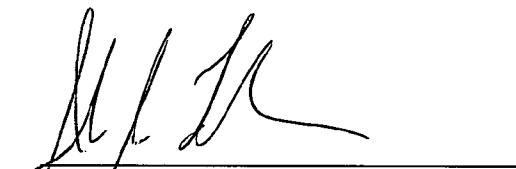
hereby acknowledge that the facts set forth in the aforesaid *Respondents' Answer*

and New Matter With Affirmative Defenses To The Petition For Review are made

subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to

authorities.

Dated: 5/23, 2005



John J. Talaber, Esquire
Attorney for Respondents

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

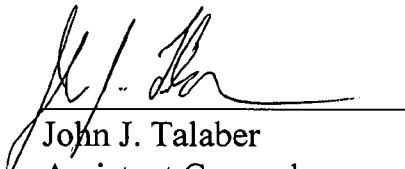
Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the *Respondents' Answer and New Matter with Affirmative Defenses to the Petition for Review* in the above-referenced matter.

Service by first-class mail addressed as follows:

Robert C. Pushinsky (DU-8702)
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



John J. Talaber
Assistant Counsel

Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: May 23, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY
Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF CORRECTIONS, et al.
Respondents.

MOTION FOR ENLARGEMENT OF TIME TO FILE ANSWER TO RESPONDENTS'
NEW MATTER WITH AFFIRMATIVE DEFENSES

AND NOW, comes Petitioner Robert C. Pushinsky, pro se, in the above captioned matter, requesting an additional 30 days to file an Answer to Respondents' New Matter With Affirmative Defenses, and avers the following:

1. Petitioner is pro se.
2. Petitioner is incarcerated.
3. Petitioner has an untreated mental illness.
4. Petitioner is not schooled in the law.
5. Petitioner is unable to get enough law library time to meet deadline.
6. Petitioner is currently involved in a total of five legal actions.
7. Petitioner is forced to work by the DOC.
8. Petitioner is forced to follow nonsensical rules including living with another individual.
9. On June 16, 2005 a retaliative search, of Petitioner's cell, mixed up Petitioner's legal papers causing a delay in Petitioner's filing in this case.
10. Petitioner is unable to photocopy all of the cases needed--for reading in the cell--to properly file; due to the DOC taking 40% of Petitioner's money, 20% of which is against the sentencing order of Fayette County Court.

Wherefore the Petitioner prays this Honorable Court grants a 30 day extension to file an answer to Respondents' New Matter With Affirmative Defenses.

Date: 6/22/05

Robert C. Pushinsky
ROBERT C. PUSHINSKY

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OF PENNSYLVANIA
2005 JUN 24 A 8:21

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY :
Petitioner, :
: :
v. : No. 108 MD 2005 :
: :
DEPARTMENT OF CORRECTIONS, et al. :
Respondents. :
:

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2005, a true and correct copy of the Motion For Enlargement Of Time To File Answer To Respondents' New Matter With Affirmative Defenses was served upon the persons and in the manner indicated below.

Service by first class mail, postage prepaid addressed as follows:

Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011

Commonwealth Court Of Pennsylvania
Office Of The Prothonotary
624 Irvis Office Building
Harrisburg, PA 17120

Robert C. Pushinsky
pro se
ROBERT C. PUSHINSKY
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert C. Pushinsky,
Petitioner

v.

Department of Corrections of the
Commonwealth of Pennsylvania;
Jeffrey A. Beard, Secretary of
Corrections; Sharon M. Burks, Chief
Grievance Coordinator; Nancy K.
Smith, Mailroom Supervisor;
Cynthia Kechisen, Principal/
Publication Review Committee;
George N. Patrick, Superintendent;
Peggy Baughman, Purchasing
Agent II, Defendants, Individually
and in their Official Capacities,

Respondents

No. 108 M.D. 2005

PER CURIAM

ORDER

Now, June 24, 2005, upon consideration of petitioner's motion
for enlargement of time, the motion is granted. Petitioner's answer to new
matter is due on or before July 6, 2005.

Certified from the Record

JUN 27 2005

and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
v. : No. 108 MD 2005
DEPARTMENT OF CORRECTIONS, et al. :
Respondents. :

PETITIONERS' RESPONSE TO NEW MATTER NUNC PRO TUNC

And now comes the Petitioner, ROBERT C. PUSHINSKY, pro se, in the above captioned matter and files the following Response to the new matter Nunc Pro Tunc and, in support thereof, avers as follows:

I. Petitioner received the Order, granting the motion for enlargement of time, on July 6, 2005.

II. It was impossible for Petitioner to prepare the response and mail it on the same day.

III. Petitioner was called to work (unscheduled) on July 7, 2005 at 6pm which interrupted the preparation of the response.

IV. Exhibit A shows the SCI-Houtzdale mailroom stamp dated July 5, 2005.

V. Exhibit B shows DOC policy on incoming mail DC-ADM 803 section E.2.e. stating; "each piece of incoming mail shall be delivered to the inmate within 24 hours"--showing Petitioner received the order on July 6, 2005.

VI. Petitioner has prepared the response as diligently as possible.

VII. Petitioner requests the Court to grant the Nunc Pro Tunc filing of the response, two days after the deadline, on July 8, 2005.

RESPONSE TO NEW MATTER

1. Denied. The Respondents did not follow DOC policy, did not act within the scope of their authority, and did violate Petitioner's constitutional rights; therefore, the Respondents are not immune from suit.

2. Denied. The Respondents violated the laws on delivery of U.S. mail, United States Constitutional Amendments and The Pennsylvania Constitution.

3. Denied.

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OF PENNSYLVANIA
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4. Denied. The Respondents negligent, willful and malicious conduct caused injury (condition) suffered by the Petitioner.

5. Denied.

6. Denied. The Petitioner's state law claims are not barred by sovereign immunity and Respondents' malicious, willful, and negligent conduct falls under the exceptions.

7. Denied in part. Respondents do not have any defenses to or limitations upon Petitioner's claims.

8. Denied.

9. Denied. This is an unproven statement and strict proof is demanded at time of trial if relevant. The Respondents actions, before, during, and especially after the matter of this suit, show they were malicious, in bad faith, and outside their authority.

10. Denied.

11. Denied. Respondents actions/inactions were not justified.

12. Denied. The Petitioner did not consent to the actions/inactions committed by Respondents. Strict proof is demanded of Respondents' claim.

13. Denied. The actions or inactions of the Respondents is against statute, regulation, or directive; therefore, the Respondents are not immune from suit.

14. Denied. Strict proof is demanded.

15. Denied. Conclusions of law.

16. Denied.

17. Denied. The claims are not barred.

18. Denied. This is to general to specifically answer.

19. The Respondents "retaliatory" actions show malicious, intentional, willful and bad faith conduct toward Petitioner in numbers 1 through 18 above.

WHEREFORE, for the reasons stated above, the Petitioner respectfully requests that this Honorable Court DENY Respondents' request to dismiss.

Date: 7/8/05

Respectfully submitted,
Robert C. Pushinsky
ROBERT C. PUSHINSKY
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
v. : No. 108 MD 2005
DEPARTMENT OF CORRECTIONS, et al. :
Respondents. :

VERIFICATION

I, Robert C. Pushinsky declare under penalty of perjury pursuant to Title 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, that the foregoing averments and attached documents are true and correct to the best of my information and belief.

Date: 7/8/05

Respectfully submitted,
Robert C. Pushinsky
ROBERT C. PUSHINSKY
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

(2) permission shall be granted only when there is reason to believe the correspondence may reveal or discuss planned or future criminal activity including but not limited to the following:

- (a) any information relating to a possible escape;
- (b) the introduction of weapons, drugs, money, or other contraband that presents a clear threat to the security of the facility;
- (c) any information relating to a possible prison disturbance or other activity that presents a clear threat to the security of the facility; and
- (d) any information relating to other criminal activity. Specifics of suspected activity must be provided.

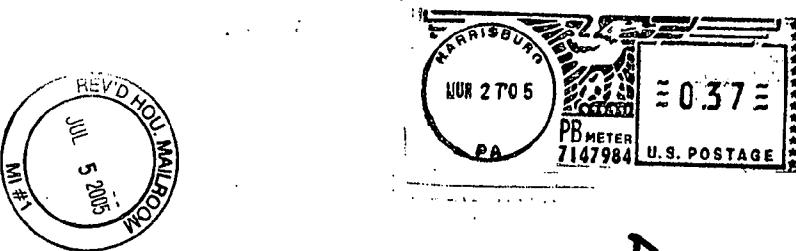
b. A log shall be kept of instances where mail is read, and the inmate shall be notified unless such notification would impede an investigation of misconduct or suspected criminal activity. The inmate shall be notified that his/her mail was read at the completion of the investigation.

E. Handling and Distribution of Mail

1. Outgoing mail placed in the housing unit collection boxes or other designated locations shall be collected each day, Monday through Friday. A reasonable effort shall be made to ensure that such mail is delivered to the US Postal Service on the same day.
2. Incoming mail, including packages, shall be processed daily (excluding weekends and state/federal holidays) as listed below:²⁰
 - a. The facility will not accept any mail that has postage due.
 - b. Every piece of inmate mail shall be checked against the inmate roster.
 - c. If an inmate has been transferred or released, mail shall be forwarded, unopened, to the new address, if known, for 60 days.²¹ If no forwarding address is available, mail shall be returned, unopened, to the sender. It is the responsibility of the inmate to notify correspondents and publishers of a change of address.
 - d. If an inmate elects to have mail held by the mailroom while on furlough or an Authorized Temporary Absence (ATA), a formal notification, in writing, may be required by the facility, and appropriate procedures shall be established by the facility.
 - e. Each piece of incoming mail shall be delivered to the inmate within 24 hours and packages shall be held no more than 48 hours, excluding weekends and holidays.²²

EXHIBIT B

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
624 IRVIS OFFICE BUILDING
HARRISBURG, PENNSYLVANIA 17120



X
33

Robert Charles Pushinsky
DU-8702, SCI Houtzdale
P.O. Box 1000
Houtzdale, PA 16698

EXHIBIT A

²⁰ 1-ABC-5D-09
²¹ 4-4496, 1-ABC-5D-10, 4-ACRS-6A-09
²² 4-4495

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
v. : No. 108 MD 2005
DEPARTMENT OF CORRECTIONS, et al. :
Respondents. :
:

CERTIFICATE OF SERVICE

I hereby certify that of July 8, 2005, a true and correct copy of the Petitioner's Response to New Matter Nunc Pro Tunc was served upon the persons and in the manner indicated below.

Service by first class mail, postage prepaid addressed as follows:

COMMONWEALTH COURT OF PENNSYLVANIA
OFFICE OF THE PROTHONOTARY
624 Irvis Office Building
Harrisburg, PA 17120

John J. Talaber Assistant Counsel
DEPARTMENT OF CORRECTIONS
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011

Respectfully submitted,
Robert C. Pushinsky
ROBERT C. PUSHINSKY
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
v. : NO. 108 MD 2005
DEPARTMENT OF CORRECTIONS, et al., :
Respondents. :
SK

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OF PENNSYLVANIA
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REQUEST FOR DISCOVERY
Plaintiff's Request For Production of Documents.

The plaintiff requests that the defendants produce the documents listed herein within 30 days by providing the plaintiff with copies:

1. All "Unacceptable Correspondence" forms dealing with publications coming from other than the original source.
2. All "Unacceptable Correspondence" forms dealing with publications coming from an university, college, school, church, organization, etc., where the inmate was not authorized to take a correspondence course.
3. All "Unacceptable Correspondence" forms dealing with photocopies coming from other than the original source.
4. All "Unacceptable Correspondence" forms dealing with photocopies coming from an university, college, school, church, organization, etc., where the inmate was not authorized to take a correspondence course.
5. All "Unacceptable Correspondence" forms dealing with correspondence, not included in items 1, 2, 3, or 4 of this request, that came from; other than the original source; a college, university, church, organization, etc., where it was an unauthorized correspondence course; and/or the original source but was considered a security risk on the possibility it could contain unallowed information.
6. All grievances, request slips, or other documents received by the defendants or their agents concerning items 1, 2, 3, 4, or 5 of this request.
7. Any logs, lists, or other documentation reflecting grievances filed pertaining to item 6 of this request.
8. All documents created by any of the defendants or their agents in response to the documents in item 6 of this request.
9. All lists of the publications received by inmates from universities, colleges, schools and other educational organizations.
10. All lists of authorized correspondence courses taken by inmates including; name of college/organization and name of the inmate (potential witness).
11. The Administrative Directive that deals with correspondence courses,

memoranda/bulletins, and procedure manual(s) for implementation of this directive.

12. Administrative Directive that deals with determination of original source, memoranda/bulletines, and procedure manual(s) for implementation of this directive.

13. The Administrative Directive that deals with correspondence in the form of photocopied pages, memoranda/bulletins, and procedure manual(s) for implementation of this directive.

14. Administrative Directive that deals with the grievance procedure (defendants' responses at the initial and appeal stages) , memoranda/bulletines, and procedure manual(s) for implementation of this directive.

15. Administrative Directive that deals with Publication Review Committee determination of content in publications, memoranda/bulletines, and procedure manual(s) for implementation of this directive.

16. All grievances filed by Christopher Obst.

17. All list of publications received by Christopher Obst.

18. Any correspondence courses taken by Christopher Obst while at Houtzdale.

19. A list of all Christopher Obst's account deductions for outgoing mail.

20. A list of all books received by inmates from universities, colleges, schools, churches, organizations, etc., when the return address does not say bookstore on it.

Date: 9/14/05

Robert C. Pushinsky

ROBERT C. PUSHINSKY

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
v. : NO. 108 MD 2005
DEPARTMENT OF CORRECTIONS, et al., :
Respondents. :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the Plaintiff's Request For Production of Documents upon the persons and in the manner below, which service satisfies the requirements of Pa. R. App. P. 122.

Service by first class mail addressed as follows:

John J. Talaber Assistant Counsel
Department of Corrections
Office of Chief Counsel
55 Utley, Drive
Camp Hill, PA 17011

Commonwealth Court of Pennsylvania
Office of the Prothonotary
624 Irvis Office Building
Harrisburg, PA 17120

Date: 9/14/05

Robert C. Pushinsky

ROBERT C. PUSHINSKY
DU-8702
P.O. BOX 1000
HOUTZDALE, PA 16693

4

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

Respondents,

RESPONDENTS' MOTION TO STAY DISCOVERY

NOW, comes Debra Sue Rand, counsel for the Respondents, and files this Motion to Stay Discovery pending disposition of the question of this Court's subject matter jurisdiction.

1. Petitioner is Robert C. Pushinsky (Inmate No. DU-8702), who is presently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale").

2. Respondents are various officers and employees of the Department of Corrections ("Department").

3. Petitioner, in his Petition for Review (entitled "Complaint"), seeks money damages for the confiscation of certain textbooks and other papers concerning the subject of genetic engineering, which Petitioner received while incarcerated at SCI-Houtzdale.

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4. This Honorable Court has held that where an inmate seeks money damages, even if he also seeks declaratory or injunctive relief, the matter is within the original jurisdiction of the courts of common pleas. *Miles v. Beard*, 847 A.2d 161 (Pa. Cmwlth. 2004), *petition for allowance of appeal denied*, ___ Pa. ___, 870 A.2d 325 (2005).

5. A favorable disposition of the jurisdictional question will obviate the need for discovery proceedings in this Court.

WHEREFORE, the Respondents respectfully request that the Court stay any action on discovery pending resolution of the jurisdictional issue.

Respectfully submitted,

Office of General Counsel

By: Debra Sue Rand
Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

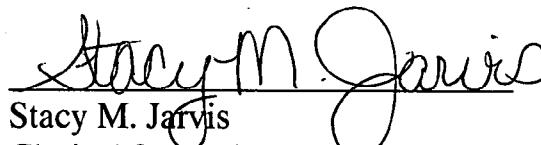
Respondents,

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Respondents' Motion to Stay Discovery upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Robert C. Pushinsky, DU-8702
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



Stacy M. Jarvis
Clerical Supervisor 2
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

Respondents,

**RESPONDENTS' APPLICATION FOR RELIEF IN THE NATURE OF A
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION**

NOW, comes Debra Sue Rand, counsel for the Respondents and files this Application for Relief (Pa.R.A.P. 123) in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction.

1. Petitioner is Robert C. Pushinsky (Inmate No. DU-8702), who is presently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale").
2. Respondents are various officers and employees of the Department of Corrections ("Department").
3. Petitioner, in his Petition for Review (entitled "Complaint"), seeks money damages for the confiscation of certain textbooks and other papers concerning the subject of genetic engineering, which Petitioner received while incarcerated at SCI-Houtzdale.

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
1 OCT 2005 14

4. This Honorable Court has held that where an inmate seeks money damages, even if he also seeks declaratory or injunctive relief, the matter is within the original jurisdiction of the courts of common pleas. *Miles v. Beard*, 847 A.2d 161 (Pa. Cmwlth. 2004), *petition for allowance of appeal denied*, ___ Pa. ___, 870 A.2d 325 (2005).

WHEREFORE, the Respondents respectfully request that this Court dismiss the above-captioned matter on the basis of lack of subject matter jurisdiction.¹

Respectfully submitted,

Office of General Counsel

By: Debra Sue Rand
Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444

Dated: October 7, 2005

¹ Counsel recognizes that it would have been more expedient if former counsel had raised this matter in a preliminary objection and apologizes to the Court for raising the matter at this later juncture in the proceedings. A question of subject matter jurisdiction, however, can be raised at any time. *Reidel v. Human Relations Commission of the City of Reading*, 559 Pa. 34, 739 A.2d 121 (1999).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

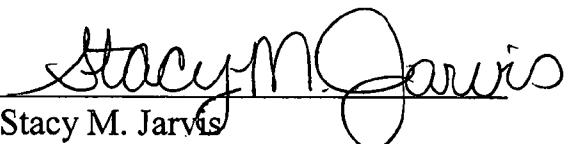
Respondents,

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Respondents' Application for Relief in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Robert C. Pushinsky, DU-8702
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



Stacy M. Jarvis
Clerical Supervisor 2
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

Respondents,

PROPOSED ORDER

NOW, this _____ day of October 2005, Respondents' Application for Relief in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction is **GRANTED** and the Petition for Review is **DISMISSED**.

BY THE COURT:

J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Robert C. Pushinsky, :
Petitioner :
v.
Department of Corrections of the :
Commonwealth of Pennsylvania; :
Jeffrey A. Beard, Secretary of :
Corrections; Sharon M. Burks, Chief :
Grievance Coordinator; Nancy K. :
Smith, Mailroom Supervisor; :
Cynthia Kechisen, Principal/ :
Publication Review Committee; :
George N. Patrick, Superintendent; :
Peggy Baughman, Purchasing :
Agent II, Defendants, Individually :
and in their Official Capacities, :
Respondents : No. 108 M.D. 2005

PER CURIAM

O R D E R

Now, October 11, 2005, upon consideration of assistant counsel John Talaber's application for leave to withdraw as counsel for respondents, the application is granted.

The Chief Clerk is directed to withdraw the appearance of John Talaber for respondents and serve all documents for respondents on Debra S. Rand.

Certified from the Record

OCT 12 2005

and Order Exit

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY, :
: Petitioner, :
: :
v. : No. 108 M.D. 2005
: :
DEPARTMENT OF CORRECTIONS, :
et al., :
: :
Respondents, :
:

RESPONDENTS' APPLICATION FOR RELIEF IN THE NATURE OF A
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION

NOW, comes Debra Sue Rand, counsel for the Respondents and files this Application for Relief (Pa.R.A.P. 123) in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction.

1. Petitioner is Robert C. Pushinsky (Inmate No. DU-8702), who is presently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale").
2. Respondents are various officers and employees of the Department of Corrections ("Department").
3. Petitioner, in his Petition for Review (entitled "Complaint"), seeks money damages for the confiscation of certain textbooks and other papers concerning the subject of genetic engineering, which Petitioner received while incarcerated at SCI-Houtzdale.

4. This Honorable Court has held that where an inmate seeks money damages, even if he also seeks declaratory or injunctive relief, the matter is within the original jurisdiction of the courts of common pleas. *Miles v. Beard*, 847 A.2d 161 (Pa. Cmwlth. 2004), *petition for allowance of appeal denied*, ___ Pa. ___, 870 A.2d 325 (2005).

WHEREFORE, the Respondents respectfully request that this Court dismiss the above-captioned matter on the basis of lack of subject matter jurisdiction.¹

Respectfully submitted,

Office of General Counsel

By: Debra Sue Rand
Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444

Dated: October 7, 2005

¹ Counsel recognizes that it would have been more expedient if former counsel had raised this matter in a preliminary objection and apologizes to the Court for raising the matter at this later juncture in the proceedings. A question of subject matter jurisdiction, however, can be raised at any time. *Reidel v. Human Relations Commission of the City of Reading*, 559 Pa. 34, 739 A.2d 121 (1999).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

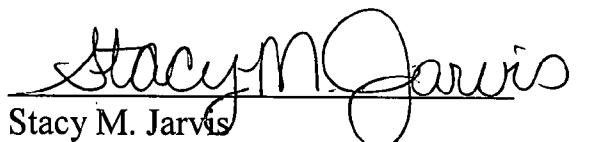
ROBERT C. PUSHINSKY, :
: Petitioner, :
: :
v. : No. 108 M.D. 2005
: :
DEPARTMENT OF CORRECTIONS, :
et al., :
: :
Respondents, :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Respondents' Application for Relief in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Robert C. Pushinsky, DU-8702
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



Stacy M. Jarvis
Clerical Supervisor 2
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

**APPLICATION FOR A SECOND ENLARGEMENT
OF TIME TO RESPOND TO THE PETITION FOR REVIEW**

Respondents, by and through their attorney, John J. Talaber, Assistant Counsel, Governor's Office of General Counsel, pursuant to Pa.R.A.P. 105(b), hereby respectfully request a second enlargement of time until Monday, May 23, 2005 to answer the petition for review and raise in new matter their affirmative defenses. The following is stated in support thereof:

Parties and Nature of Action:

1. Petitioner Robert C. Pushinsky (DU-8702) is an inmate currently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale"). *See Petition for Review, p. 2 ¶ 4.*
2. Respondents are: (1) Secretary of the Department of Corrections, Jeffrey A. Beard, Ph.D.; (2) Chief Grievance Coordinator, Sharon M. Burks; (3) Nancy K. Smith; (4) Cynthia Kechisen; (5) George N. Patrick; and (6) Peggy

Baughman, in the above-captioned matter. *See* Petition for Review, pp. 2, 3,

¶ 5-11.

3. The Petitioner's civil action seeks declaratory and injunctive relief, as well as compensatory and punitive damages for alleged violations of his constitutional rights. *See* Petition for Review, pp. 1-12.

Relevant Procedural History:

4. The Petitioner filed an application for *in forma pauperis* status, and an application to file a reduced number of copies of his petition for review on March 4, 2005. *See* Court Docket, p. 3, attached hereto as Exhibit A.
5. On March 7, 2005, the Petitioner filed his petition for review. *Id.*
6. The Court, by order dated March 15, 2005, granted the Petitioner's application to proceed with *in forma pauperis* status, and directed that this matter would be treated as a petition for review filed within its original jurisdiction. *Id.*
7. On March 17, 2005, the Respondents' counsel entered his appearance on behalf of the Respondents, and Chief Counsel Michael A. Farnan withdrew his appearance for the Respondents.
8. While the Petitioner endorsed his petition with a notice to plead, he did not properly served the document pursuant to Pa.R.A.P. 1514; however, notwithstanding this procedural defect (and in the interests of judicial

economy), the Respondents treated their answer as due on or before April 15, 2005.

9. Due to Respondents' counsel's current caseload, on March 17, 2005, he filed their first application for an enlargement of time, asking in until Monday, May 16, 2005, to file the Respondents' response.
10. The Court, by order dated March 21, 2005, granted the first application for an enlargement of time, directing the Respondents to answer or otherwise plead to the petition on or before, Monday, May 16, 2005.
11. Accordingly, the Respondents' answer or other pleading is now due.

The Respondents' Application for an Enlargement of Time:

12. Pa. R.A.P. 105(b) provides, in relevant part, that "[a]n appellate court for good cause shown may upon application enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time...."
13. This Honorable Court has the power to "liberally construe [the Rules] to secure the just speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." *See* Pa.R.C.P. No. 126; *see also Haney v. Sabia*, 428 A.2d 1041, 1044 (Pa. Cmwlth. 1981)(citing

E.J. McAleer & Co., Inc. v. Iceland Products, 475 Pa. 610, 381 A.2d 441 (1977).

14. Respondents' counsel respectfully requests an enlargement of time of an additional seven (7) days, until Monday, May 23, 2005, to file the Respondents' answer to the petition for review, and to raise as new matter their affirmative defenses.
15. Since the March 17, 2005 application, Respondents' counsel has: (1) drafted and filed an answer in *Dorman v. Burks, et al.*, Huntingdon County Court of Common Pleas, No. 2004-1051 (Kurtz, J.); (2) served lengthy discovery responses in *Gaskins v. Cerullo, et al.*, USDC-MD of Pa. No. 03-CV-2341 (Nealon, J.); (3) filed an answer with affirmative defenses to the amended petition for review in see *Brooks v. Dept. of Corr.*, Pa. Cmwlth. Ct. No. 652 MD 2004; (4) prepared for a jury trial in *Rauso v. Zimmerman, et al.*, USDC-MD of Pa No. 97-CV-1841 (Conner, J.) that was calendared to begin with jury selection on Monday, May 1, 2005, but has since been postponed to July 2005; (5) represented ten (10) Department of employees who were served with subpoenas to testify in the criminal trial of *Com. of Pa. v. Jerome Bussey*, Montgomery County Court of Common Pleas, No. 923-04 (requiring counsel to attend Court and argue a motion to quash and/or alter the subpoenas before the Honorable William J. Furber, Jr. on Monday, April

11, 2005 at 5:00 p.m. in Norristown, Pennsylvania); (6) on April 13, 2005, coordinated the logistics in obtaining a former inmate's records from SCI-Greensburg, reviewed the documents, and then responded to a subpoena request from the United States Attorney's Office in Philadelphia requesting all of the former inmate's medical and Department records; and (7) during the week of April 4th to April 11th, which was the undersigned attorney's scheduled week with another Assistant Counsel to respond to telephone call and emails from staff at the Department's twenty-seven (27) state correctional institutions, addressed and rendered advise on nine (9) legal issues that were deemed to be "urgent" matters (requiring immediate or almost immediate responses).

16. Moreover, the last week of April 2005, the undersigned attorney drafted and filed motions, and/or responded to discovery requests in the following federal cases: (1) *Bruton v. Gillis, et al.*, USDC-MD No. 04-0083 (Caputo, J.) (filed a motion for an enlargement of time *nunc pro tunc* to file an answer to the Plaintiff's amended complaint); (2) *Davis v. Filipiak*, USDC-MD No. 03-CV-0068 (Nealon, J.) (Blewitt, M.J.) (drafted a motion for an enlargement of time concerning discovery requests); (3) *Drayton v. Kyler, et al.*, USDC-MD No. 02-0077 (Jones, J.) (prepared for and attended the Court's hearing on discovery matters held on May 3, 2005, in Williamsport,

Pa.); (4) *Gaskins v. Cerullo, et al.*, USDC-MD No. 03-2341 (Nealon, J.) (served a supplemental response to Plaintiff's first and second requests for production of documents); (5) *Heath v. Shannon, et al.*, USDC-(filed a motion for an enlargement of time, in part *nunc pro tunc* to file their answer); (6) *Hughes v. Chesney, et al.*, USDC-MD No. 00CV-0017 (Kosik, J.) (filed a motion for an enlargement of time, in part *nunc pro tunc*, to answer the complaint); (7) *Johnson, Ira v. Palockovich, et al.*, USDC-MD No. 04-CV-1804 (Jones, J.) (Mannion, M.J.) (filed a motion for an enlargement of time *nunc pro tunc* to respond to the Plaintiff's discovery requests); (8) *Johnson, Robert v. DOC Medical Dept., et al.*, USDC-MD No. 04-CV-1177 (Caputo, J.); (9) *Sides v. Marsh, et al.*, USDC-MD No. 04-1349 (Conner, J.) (Smyser, M.J.) (filed a motion for an enlargement of time, in part *nunc pro tunc*, to respond to the Plaintiff's discovery requests); and (10) *Wood v. Dr. Romeo, et al.*, USDC-MD No. 04-1693 (Muir, J.) (filed a motion for enlargement of time, in part *nunc pro tunc*, to answer the Plaintiff's complaint).

17. Additionally, the last week of April 2005, the Respondents' counsel filed: (1) a cross-motion for summary judgment; and (2) a motion for an enlargement of time, in part *nunc pro tunc*, to file the supporting brief and

opposing brief to motions for summary judgment in *Grim v. Dept. of Corrections*, Pa. Cmwlth. Ct. No. 192 MD 2004.

18. This month the Respondents' counsel drafted motions that were filed in the following cases: (1) *Brown v. Pa. Dept. of Corrections, et al.*, Cumberland County Court of Common Pleas, No. 04-CV-180; (2) *Betrand v. Kyler, et al.*, Cumberland County Court of Common Pleas, No. 99-6452; and (3) drafted and filed Appellees' position paper for the Court appointed Mediator in *Chimenti v. Dr. Kimber, et al.*, Third Circuit Court of Appeals, No. 03-2056 (scheduled for a mediation on May 18, 2005).
19. Between now and the end of May 2005, the Respondents' counsel will be researching, drafting, and filing, answers and/or motions and briefs in the following federal cases: (1) *Andrews v. Vance, et al.*, USDC-MD No. 04-CV-551 (McClure, J.) (motion for summary judgment with statement of material facts, supporting brief and supporting documents on or before May 25, 2005); (2) *Bartelli v. Fedak*, USDC-MD No. 04-907 (Kosik, J.) (preparing a pre-trial memorandum and exhibits for the pre-trial conference that is tentatively scheduled for sometime in May or June 2005); (3) *Bruton v. Gillis, et al.*, USDC-MD No. 04-0083 (Caputo, J.) (drafting and filing an answer to the Plaintiff's amended complaint on or before Friday, May 27, 2005); (4) *Davis v. Filipiak*, USDC-MD No. 03-CV-0068 (Nealon, J.)

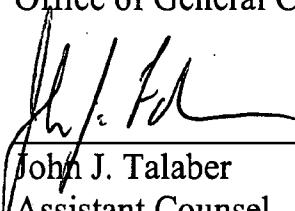
(Blewitt, M.J.) (responding to the Plaintiff's outstanding discovery requests); (5) *Drayton v. Kyler, et al.*, USDC-MD No. 02-0077 (Jones, J.) (responding to the Plaintiff's outstanding discovery request on or before May 14, 2005); (6) *Heath v. Shannon, et al.*, USDC-MD No. 04-2275 (Jones, J.) (drafting an answer to the complaint, and filing a motion for judgment on the pleadings with supporting brief, a motion for leave to depose with a supporting brief, and a motion for case management deadline with a supporting brief, on or before May 27, 2005); (7) *Johnson, Ira v. Palockovich, et al.*, USDC-MD No. 04-CV-1804 (Jones, J.) (Mannion, M.J.) (drafting and serving discovery responses to the Plaintiff on or before Friday, May 27, 2005); (8) *Moss v. Miller, et al.*, USDC-MD No. 03-CV-1793 (Rambo, J.) (drafting and serving responses to the Plaintiff's discovery requests due on or before May 18, 2005); (9) *Murray v. Beard, et al.*, USDC-MD No. 3:CV-05-431 (Conaboy, J.) (answering the Plaintiff's complaint on or before May 16, 2005); (10) *Sides v. Marsh, et al.*, USDC-MD No. 04-1349 (Conner, J.) (Smyser, M.J.) (answering the Plaintiff's third amended complaint, filing an opposing brief to the Plaintiff motion for summary judgment; filing an opposing brief to the Plaintiff's motion for a temporary restraining order, and responding to the Plaintiff's discovery requests on or before Friday, May 27, 2005); and (11) *Wood v. Dr. Romeo, et al.*, USDC-MD No. 04-1693) (Muir, J.) (answering

the complaint, the filing a motion for judgment on the pleadings with supporting brief).

20. Over the weekend of May 14 and 15, 2005, Respondents' counsel drafted an answer to the Petitioner's petition for review; however, he is requesting an additional week to file the aforementioned document so that he can investigate about ten (10) of the averments made in the petition to either admit or deny the allegations.
21. The Respondents' counsel represents to the Court that he is working with his immediate supervisor, Deputy Chief Counsel William Fairall, and the Chief Counsel, Michael A. Farnan in better managing his caseload, and the Office has taken steps to have other attorneys from the Office of General Counsel available to help litigate and resolve the increased workload.
22. Counsel represents that the Respondents will not ask for additional enlargements of time for this matter.
23. This application is not submitted for purposes of needless delay or to prejudice the Petitioner or this Honorable Court.

WHEREFORE, for the reasons cited above, the Respondents through their counsel respectfully request that the Court grant them a second enlargement of time until on or before Monday, May 23, 2005, to file their answer to the petition for review and raise as new matter their affirmative defenses.

Respectfully submitted,
Office of General Counsel

BY: 

John J. Talaber
Assistant Counsel
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444
Attorney Id. No. 83279

Dated: May 16, 2005.

A

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 108 MD 2005

Page 1 of 4

May 16, 2005



Robert C. Pushinsky,
Petitioner

v.

Department of Corrections of the
Commonwealth of Pennsylvania;
Jeffrey A. Beard, Secretary of
Corrections; Sharon M. Burks, Chief
Grievance Coordinator; Nancy K. Smith,
Mailroom Supervisor; Cynthia Kechisen,
Principal/Publication Review Committee;
George N. Patrick, Superintendent; Peggy
Baughman, Purchasing Agent II,
Defendants, Individually and in their
Official Capacities,
Respondents

Initiating Document: Complaint

Case Status: Active

Case Processing Status: March 7, 2005 Awaiting Answer

Journal Number:

Case Category: Miscellaneous CaseType: Inmate Petition for Review

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Petitioner Pushinsky, Robert C.

Pro Se: ProSe

Appoint Counsel Status:

IFP Status: Yes

Attorney: Pushinsky, Robert Charles

Law Firm:

Address: DU-8702, SCI Houtzdale

P.O. Box 1000

Houtzdale, PA 16698

Phone No.:

Respondent Department of Corrections

PACMS Web Docket Sheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated docket sheets.

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or omissions on these web docket sheets.

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 108 MD 2005

Page 2 of 4

May 16, 2005



Pro Se:

Appoint Counsel Status:

IFP Status:

Attorney: Talaber, John J.

Law Firm:

Address: Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
Phone No.: (717)731-0444

TRIAL COURT/AGENCY INFORMATION

Court Below: Department of Corrections

County:

Division:

Date of Order Appealed From:

Judicial District:

Date Documents Received: March 7, 2005

Date Notice of Appeal Filed:

Order Type:

Lower Court Docket No.: DU-8702

ORIGINAL RECORD CONTENTS

BRIEFING SCHEDULE

PACMS Web Docket Sheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated docket sheets.

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Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 108 MD 2005

Page 3 of 4

May 16, 2005



DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
March 4, 2005	Application to Proceed In Forma Pauperis IFP	Petitioner	Pushinsky, Robert C.
March 4, 2005	Application to File Reduced Number of Copies Petition to File a Reduce Number of Copies	Petitioner	Pushinsky, Robert C.
March 7, 2005	Complaint Filed	Petitioner	Pushinsky, Robert C.
March 15, 2005	Order Granting Application to Proceed In Forma Pauperis The matter shall be treated as a PFR addressed to this court's original jurisdiction.	Per Curiam	
March 17, 2005	Application for Extension of Time to File App. for an Enlargement of Time to Respond to the PFR	Respondent Respondent Respondent Respondent Respondent Respondent Respondent	Department of Corrections Beard, Jeffrey Burks, Sharon M. Patrick, George Smith, Nancy K. Kechisen, Cynthia Baughman, Peggy
March 17, 2005	Praecipe for Appearance Praecipe for Appearance Talaber, John J.	Respondent	Department of Corrections
March 17, 2005	Praecipe for Withdrawal of Appearance		

PACMS Web Docket Sheet

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Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 108 MD 2005

Page 4 of 4

May 16, 2005



Praeclipe for Withdrawal of Appearance Farnan, Michael A.

Respondent Department of Corrections

March 21, 2005 Order Granting Application for Extension of Time to File

Respondent shall file its answer or otherwise plead by 5-16-05.

Per Curiam

REARGUMENT/RECONSIDERATION/REMITTAL

Reargument/Reconsideration Filed Date:

Reargument Disposition:

Date:

Record Remitted:

PACMS Web Docket Sheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated docket sheets.

Neither the Appellate Courts nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on these web docket sheets.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

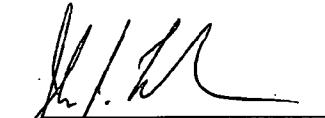
Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the *Respondents' Second Application for an Enlargement of Time* in the above-referenced matter.

Service by first-class mail addressed as follows:

Robert C. Pushinsky (DU-8702)
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000


John J. Talaber
Assistant Counsel

Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: May 16, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

ORDER

AND NOW this _____ day of _____ 2005, upon

consideration of the *Application for Leave to Withdraw as Counsel for the Respondents* by Assistant Counsel John J. Talaber, and the simultaneous entry of appearance for the Respondents by Assistant Counsel Debra S. Rand, it is hereby ORDERED that said application is GRANTED. The Prothonotary is directed to withdraw the appearance of Assistant Counsel Talaber for the Respondents, and serve any documents for the Respondents on Assistant Counsel Debra S. Rand.

J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

**APPLICATION FOR LEAVE TO WITHDRAW
AS COUNSEL FOR THE RESPONDENTS**

Assistant Counsel John J. Talaber, pursuant to Pa.R.A.P. 123, respectfully requests that this Honorable Court grant him leave to withdraw his appearance on behalf of Respondents Beard, Burks, Smith, Ketchisen, Patrick, and Baughman, for the following reasons:

1. Assistant Counsel Debra S. Rand entered her appearance on behalf of the Respondents in this matter on October 6, 2005.
2. Assistant Counsel Debra S. Rand is solely representing the Respondents in this matter.
3. The undersigned attorney anticipates a change in his employment location within the Commonwealth to occur sometime in October 2005; accordingly, he will no longer be in the Department's Office of Chief Counsel.

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
-6 OCT 2005 14 - 51

4. This application is not submitted for purposes of needless delay or to
prejudice the Petitioner or this Honorable Court.

WHEREFORE, for the reasons set forth above, the undersigned attorney
respectfully requests this Honorable Court grant his application for leave to
withdraw his appearance on behalf of the Respondents in this action.

Respectfully submitted,
Office of General Counsel

BY:


John J. Talaber
Assistant Counsel
Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
Phone (717) 731-0444
Fax (717) 975 2217
Jtalaber@state.pa.us
PA 83279

Dated: October 6, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v. No. 108 MD 2005

DEPARTMENT OF
CORRECTIONS, et al.

Respondents.

CERTIFICATE OF SERVICE

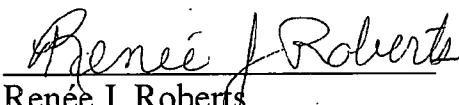
The undersigned hereby certifies that a copy of the *Application for Leave To Withdraw as Counsel For The Respondents* was served upon the person(s) in the manner indicated below:

U.S. Postal Service,
First Class Mail To:

Robert C. Pushinsky (DU-8702)
SCI-Houtzdale
P.O. Box 1000
Houtzdale, PA 16698

Interoffice Mail:

Assistant Counsel Debra S. Rand


Renée J. Roberts
Legal Assistant

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 6, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

Respondents,

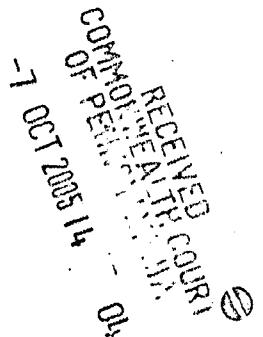
RESPONDENTS' MOTION TO STAY DISCOVERY

NOW, comes Debra Sue Rand, counsel for the Respondents, and files this Motion to Stay Discovery pending disposition of the question of this Court's subject matter jurisdiction.

1. Petitioner is Robert C. Pushinsky (Inmate No. DU-8702), who is presently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale").

2. Respondents are various officers and employees of the Department of Corrections ("Department").

3. Petitioner, in his Petition for Review (entitled "Complaint"), seeks money damages for the confiscation of certain textbooks and other papers concerning the subject of genetic engineering, which Petitioner received while incarcerated at SCI-Houtzdale.



4. This Honorable Court has held that where an inmate seeks money damages, even if he also seeks declaratory or injunctive relief, the matter is within the original jurisdiction of the courts of common pleas. *Miles v. Beard*, 847 A.2d 161 (Pa. Cmwlth. 2004), *petition for allowance of appeal denied*, ___ Pa. ___, 870 A.2d 325 (2005).

5. A favorable disposition of the jurisdictional question will obviate the need for discovery proceedings in this Court.

WHEREFORE, the Respondents respectfully request that the Court stay any action on discovery pending resolution of the jurisdictional issue.

Respectfully submitted,

Office of General Counsel

By: Debra Sue Rand
Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, Pa 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

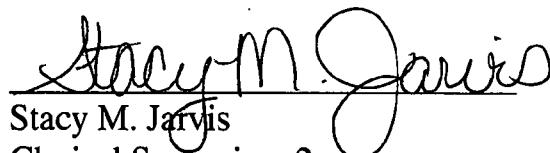
ROBERT C. PUSHINSKY, :
Petitioner, :
v. : No. 108 M.D. 2005
DEPARTMENT OF CORRECTIONS, :
et al., :
Respondents, :

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the foregoing Respondents' Motion to Stay Discovery upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Robert C. Pushinsky, DU-8702
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



Stacy M. Jarvis
Clerical Supervisor 2
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 7, 2005

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT C. PUSHINSKY,

Petitioner,

v.

: No. 108 M.D. 2005

DEPARTMENT OF CORRECTIONS,
et al.,

Respondents,

PROPOSED ORDER

NOW, this _____ day of October 2005, discovery in the above-captioned matter is hereby **STAYED** pending this Court's disposition of Respondents' Application for Relief in the Nature of a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Any response to discovery requests will be due thirty days after Respondents' Application for Relief is decided, if the Application is denied.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS FOR
CLEARFIELD COUNTY-PENNSYLVANIA

ROBERT C. PUSHINSKY, :
: Plaintiff, :
: :
v. : No. 05-1821-CD
: :
DEPARTMENT OF CORRECTIONS, :
et al., :
: Defendants, :
:

DEFENDANTS' ANSWER TO MOTION COMPEL DISCOVERY
AND REQUEST FOR EXTENSION OF TIME TO RESPOND TO
DISCOVERY REQUESTS

NOW, comes Debra Sue Rand, counsel for Defendants Beard, Burks, Smith, Kechisen, Patrick and Baughman and files this Answer to Motion Compel Discovery and Request for Extension of Time to Respond to Discovery Requests.

1. **ADMITTED.**
2. **ADMITTED.**
3. **ADMITTED.**
4. **ADMITTED.**
5. **ADMITTED.**

FILED

FEB 17 2006 *fm*
n/11/2006
William A. Shaw
Prothonotary/Clerk of Courts
l/court to Atty

NEW MATTER

6. When undersigned counsel filed in Commonwealth Court an Application for Relief in the Nature of a Motion to Dismiss for Lack of Subject

Matter Jurisdiction, she requested that discovery be stayed pending disposition of the Application.

7. When the Commonwealth Court transferred the case it dismissed the request to stay discovery as moot.

8. Thereafter, counsel was awaiting notice of this Honorable Court's assignment of a docket number for the transferred matter, which was never received.

9. Consequently, the discovery matter was inadvertently overlooked until counsel received the Plaintiff's Motion to Compel Discovery on February 13, 2006.

10. Counsel apologizes for the delay in responding to the discovery and requests 30 additional days in which to respond to Plaintiff's discovery requests.

Respectfully submitted,

Office of General Counsel

By: Debra Sue Rand
Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: February 15, 2006

IN THE COURT OF COMMON PLEAS FOR
CLEARFIELD COUNTY-PENNSYLVANIA

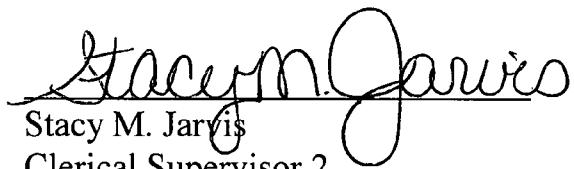
ROBERT C. PUSHINSKY, :
: Plaintiff,
: :
v. : No. 05-1821-CD
: :
DEPARTMENT OF CORRECTIONS, :
et al., :
: Defendants, :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the Defendants' Answer to Motion to Compel Discovery and Request for Extension of Time to Respond to Discovery Requests upon the person(s) in the manner indicated below:

Service by first-class mail
addressed as follows:

Robert C. Pushinsky, DU-8702
SCI-Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000



Stacy M. Jarvis
Clerical Supervisor 2
Pennsylvania Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: February 15, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT C. PUSHINSKY, :
Petitioner, :
: :
v. : 2005-1821-CD
: :
DEPARTMENT OF CORRECTIONS, :
et al. :
Respondents.: :
: :

CA.
FILED
m/10/50311 NO
FEB 22 2006
6K

William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL DISCOVERY

NOW, comes Petitioner, ROBERT C. PUSHINSKY, pro se, in the above captioned case and files this Motion To Compel Discovery pursuant Pa.R.C.P. Rule 4009.1, 4009.11, and 4009.12, for the production of documents.

1. Petitioner is ROBERT C. PUSHINSKY, who is presently incarcerated at SCI-Houtzdale.

2. Respondents are the Department of Corrections of the Commonwealth of Pennsylvania, Jeffrey A. Beard, Sharon M. Burks, Nancy K. Smith, Cynthia Kechisen, George N. Patrick, Peggy Baughman.

3. Petitioner filed a Request For Production Of Documents on 9/14/05 upon the Respondents.

4. The Respondents have failed to produce any of the requested documents as of February 8, 2006.

5. A total of 147 days has elapsed which is over the 30 day requirement of Pa.R.C.P Rule 4009.12.

Wherefore, the Petitioner Requests that this Court Compel the Respondents to produce the requested documents listed in Petitioner's Request For Discovery (No. 108 MD 2005).

1) The mail room refused to mail my legal mail out saying on the "Cash Slip" negative balance. The DOC is taking 40% of my money; 20% of the 40% is taken at the end of the month. 20% of the 40% is against the Fayette County Sentencing order of the Court — which specifically states how the money shall be paid — on parole, equal consecutive monthly payments. This has caused extreme injury and hardship to me and all my civil and criminal cases.

2) I then tried to mail it without cash slips (6 pages). This got by the mail room (I think it was their job to stop it) and the post office returned it. Then the mail room opened it — The mail room supervisor is a party in this lawsuit (Nancy Smith) — the opening of my out going legal mail is a violation of my rights, against policy (from what other inmates tell me). I do not and have never authorized them to open this legal mail.

3) I lightened the mail by removing blank sections of the paper.

Robert Charles Pushinsky

Respectfully submitted,

Robert C. Pushinsky

Robert C. Pushinsky
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

VERIFICATION

I Robert C. Pushinsky declare under penalty of perjury pursuant to Title 18 Pa.C.S. § 4904 that the foregoing averments are true and correct to the best of my information and belief.

Dated this 8 day of February, 2006.

Robert C. Pushinsky

Robert C. Pushinsky

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2006, a true and correct copy of the Motion To Compel Discovery was served upon the persons and in the manner indicated below.

Service by first class mail, postage prepaid addressed as follows:
(prisoner mailbox rule)

Debra Sue Rand
Assistant Counsel
Attorney I.D. No. 41661
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, PA 17011

William A. Shaw
Prothonotary and Clerk of Courts
P.O. Box 549
Clearfield, PA 16830

Robert C. Pushinsky

Pro se
Robert C. Pushinsky
Inmate # DU-8702
P.O. Box 1000
Houtzdale, PA 16698

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ROBERT C. PUSHINSKY,
Plaintiff

vs.

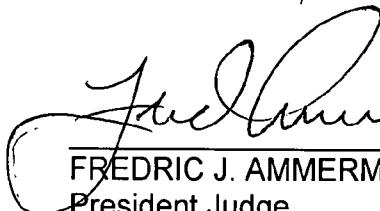
NO. 05-1821-CD

DEPARTMENT OF CORRECTIONS, et al,
Defendants

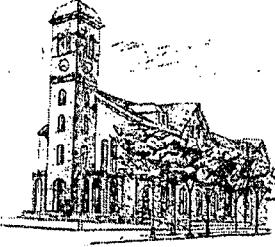
O R D E R

NOW, this 23rd day of February, 2006, the Court being in receipt of the Plaintiff's Motion to Compel Discovery which was filed February 22, 2006 as well as the Defendants' Answer to the Motion which was filed on February 17, 2006; it appearing that the Defendants' Answer and Request for an Extension of Time was not provided to the Court or the Court Administrator's office by the Prothonotary as the same did not contain a proposed order; in consideration of the Defendants' Answer and Request it is the ORDER of this Court that the Request for Extension of Time be and is hereby GRANTED. The Defendants shall have no more than 30 days from the date of this Order in which to respond to the Plaintiff's previously submitted discovery request.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 1cc
08:26 AM
FEB 24 2006 SCI-Houtzdale
2CC Atlys Rard Farnan
William A. Shaw
Prothonotary/Clerk of Courts (6)



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 2/24/04

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ROBERT C. PUSHINSKY, * NO. 2005-1821-CD
Plaintiff *
vs. *
DEPARTMENT OF CORRECTIONS OF THE *
COMMONWEALTH OF PENNSYLVANIA, JEFFREY *
A. BEARD, SHARON M. BURKS, NANCY K. SMITH, *
CYNTHIA KECHISEN, GEORGE N. PATRICK, and *
PEGGY BAUGHMAN, *
Defendants *

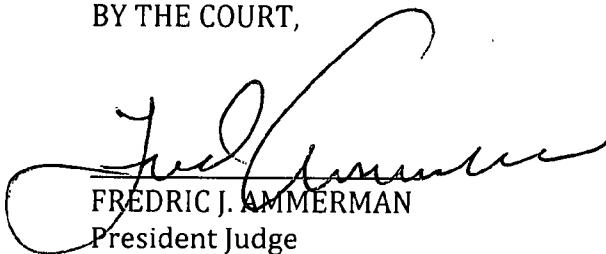
FILED
3/11/14
MAR 21 2013

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 15th day of March, 2013, upon the Court's review of the docket and noting no activity for a period of over seven years, it is the ORDER of this Court that the case be moved to inactive status. The Prothonotary shall code the case in Full Court as Z-INACTA.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge