

07-701-CD

Nole vs. Patrick

8/30/07 - Called Comm.

Court - Jeff said to
process the Notice of
Appeal with IFP denial
and send it in.

9/18/07 - mailed Notice ^{to Comm. Ct.} Order denying IFP

Date: 11/20/2007

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 05:33 PM

ROA Report

Page 1 of 2

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
05/02/2007	New Case Filed.	No Judge
	Filing: IFP Petition RE: Civil Complaint. Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918858 Dated: 5/2/2007 Amount: \$.00 (Cash) 2 Cert. to Plaintiff.	No Judge
	Order, filed 2 cert. to Plaintiff with IFP Denial Letter.	Fredric Joseph Ammerman
	NOW, this 2nd day of May, 2007, ORDER of this Court that the Application for Proceed In Forma Pauperis be and is hereby DENIED.	
05/11/2007	Filing: Civil Complaint Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918977 Dated: 05/11/2007 Amount: \$85.00 (Money order) filed by s/John F. Nole No CC	No Judge
06/18/2007	Praeipce For Entry of Appearance, filed on behalf of all Defendants, enter appearance of Michael J. McGovern, Assistant Counsel, Pennsylvania Department of Corrections. 1CC to Atty	No Judge
07/02/2007	Preliminary Objections, filed by s/Michael J. McGovern One CC Attorney McGovern	No Judge
07/06/2007	Motion to Amend Complaint, filed by Plaintiff. 1 Cert. to Plaintiff.	No Judge
07/10/2007	Order, this 10th day of July, 2007, Preliminary Objections shall be decided without oral argument. Both parties shall have no more than 30 days from this date to supply the Court with an appropriate brief on the issues. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Plff, SCI houtzdale; 1CC Atty. mcGovern	Fredric Joseph Ammerman
07/30/2007	Amended Complaint, filed by Plaintiff.	No Judge
	2 Cert. copies.	
	Proof of Service, filed by Plaintiff,	No Judge
	Served copy of Amended Complaint on Asst. Counsel, Michael J. McGovern. 2 Cert. copies.	
	Plaintiff's Motion for Preliminary Injunction, filed by Plaintiff. 2 Cert. copies.	No Judge
	Certificate of Service, filed by Plaintiff, 2 cert. copies.	No Judge
	Served copy of Motion for Injunction Relief on Michael J. McGovern.	
08/07/2007	Motion to Moot Previous Filings, filed by Plaintiff 2 Cert. to Plaintiff.	No Judge
08/08/2007	Order NOW, this 8th day of August 2007, the Court being in receipt of the Plaintiff's pro se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or presedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate campatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISED. BY THE COURT: /s/ Frederic J. Ammerma, P. Judge. 1CC plff @ AF0346 SCI Houtzdale and 1CC Atty McGovern	Fredric Joseph Ammerman
08/09/2007	Opinion and Order, filed Cert. to Plaintiff, Atty. McGovern	Fredric Joseph Ammerman
	NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.	
08/14/2007	Notice of Appeal, received from Plaintiff.	No Judge
	Sent Letter to Plaintiff requesting Payment of \$60.00 to Appellate Court and \$45.00 payment to Prothonotary	

Date: 11/20/2007

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 05:33 PM

ROA Report

Page 2 of 2

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

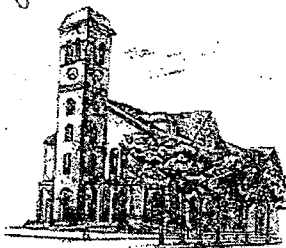
Date		Judge
08/17/2007	Received from Commonwealth Court of PA: Copies of Notice of Appeal received by Comm. Court 8-14-07 and letter regarding omissions in Notice of Appeal	No Judge
08/21/2007	Notice of Appeal, received from Plaintiff, (No Payment or order attached.)	No Judge
08/23/2007	Application to Proceed In Forma Pauperis, filed by Plaintiff. 2 Cert. to Plaintiff	No Judge
	Notice of Appeal, received from Commonwealth Court with Letter from Commonwealth Court.	No Judge
08/28/2007	Application for leave In Forma Pauperis, filed by Plaintiff. 2 Cert. Plaintiff.	No Judge
	Notice of Appeal, filed Re: August 8, 2007, Order.	No Judge
08/30/2007	Order, this 29th day of August, 2007, Plaintiff's request to proceed in forma pauperis is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Plff.	Fredric Joseph Ammerman
09/10/2007	Application In Leave to Appeal in Forma Pauperis Pursuant to PA.R.A.P. 553, filed by s/ John Frederick Nole-plff. No CC.	No Judge
	History of Appeal Process, filed by s/ John Frederick Nole-plff. No CC.	No Judge
10/17/2007	Sheriff Return, June 5, 2007 at 11:10 am Served the within Complaint on George W. Patrick to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Randall E. Britton to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Frazer Blake to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on John Bailey to Doretta Chemcharich, person in charge. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Nole \$100.00	No Judge
11/20/2007	Commonwealth Docket Sheet. Printed and filed November 20, 2007. (Original not received from Commonwealth Court.) Commonwealth Court Number 1779 CD 2007.	No Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 20 2007

Attest.

William A. Brown
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

May 18, 2007

John Frederick Nole
AF-0346
P.O. Box 1000
Houtzdale, PA 16698-1000

Dear Mr. Nole:

The five copies of the complaint you mailed for certification are not true copies; therefore I am unable to certify and return to you.

Please submit true copies to be certified and returned.

I am returning one copy with some of the discrepancies highlighted.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Enclosure

I DON'T HAVE THE EXTRA COPIES OF
THE COMPLAINT RETURNED WITH DISCREPANCIES.

RETURNED IN S/A/S/E SUBMITTAL 6-29-07

John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

June 26, 2007

Mr. William A Shaw,
Prothonotary/Clerk of Court
P.O. Box 549
Clearfield, Pa. 16830

RE: NOLE VS. PATRICK, et al
2007-00701-CD

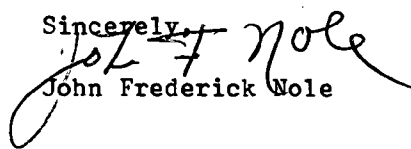
Dear Mr. Shaw:

A Self Addressed Stamped Envelop was forwarded to you, by request for the return set of a petition which was not acceptable for certification. I sent you a copy of the letter, you forwarded to me, requesting that this envelop be sent if I wished return of that petition, and I have yet to receive the four copies.

I would appreciate a return of that petition, at your earliest convenience in light of the fact that you did received the envelop in which to forwards said material to me, with appropriate postage.

Your cooperation and attention will be most appreciated.

Sincerely,


John Frederick Nole

CC: File

Date: 05/11/2007

Clearfield County Court of Common Pleas

NO. 1918977

Time: 01:01 PM

Receipt

Page 1 of 1

Received of: Nole, John Frederick (plaintiff)

\$

85.00

Eighty-Five and 00/100 Dollars

Case: 2007-00701-CD

Plaintiff: John Frederick Nole vs. George

Amount

Civil Complaint

85.00

Total:

85.00

Check: 11145083490

Payment Method: Money Order

William A. Shaw, Prothonotary/Clerk of Cou

Amount Tendered: 85.00

Change Returned: 0.00

By: _____

Clerk: BHUDSON

Deputy Clerk

Enclosed Money Order in reference
to :
Civil # 2007-701-CD

amount : \$85.00

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY PENNSYLVANIA

JUL 30 2007

Attest.

William D. [Signature]
Prothonotary/
Clerk of Courts

JOHN FREDERICK NOLE
PLAINTIFF

VS.

GEORGE W. PATRICK
RENDALL BRITON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

CIVIL ACTION -LAW

No. 2007-00701-CD

CERTIFICATE OF SERVICE

I hereby Certify that a true and correct copy of the fore-
going **Motion for Injunction Relief** were served upon the below
listed individual, Attorney for the Defendants' in the Caption
matter, by First Class Mail, Postage Pre-Paid on:

This 27 day of July 2007

Michael J. McGovern
Department of Corrections
55 Utley Drive
Camp Hill, Pa. 17001

DATE:

July 27, 2007

John F. Nole
John Frederick Nole
P.O. Box 1000 - AF-0346
Houtzdale, pa. 16698-1000

Return TO
PLAINTIFF
RECEIVED S/A/S/K

JUL 30 2007

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Attest.
CIVIL ACTION-LAW

William L. Shaw
Prothonotary/
Clerk of Courts

Vs.

No. 2007-00701-C.D.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff submits this motion for a preliminary injunction.

In determining whether a preliminary injunction should be issued, a court must consider whether the party seeking the injunction has demonstrated that: (1) it has a reasonable likelihood of success of the merits of the underlying claim; (2) no adequate remedy at law exist; (3) it will suffer irreparable harm if the preliminary injunction is denied; (4) the irreparable harm the party will suffer without injunctive relief is greater than the harm the opposing party will suffer if the preliminary injunction is granted; and (5) the preliminary injunction will not harm the public interest.

I. THERE IS A REASONABLE LIKELIHOOD THAT PLAINTIFF WILL SUCCEED ON THE MERITS IN THIS CASE.

Pursuant to State Rules of Civil Procedures. Special Relief Injunction 1531: (a) A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining

whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleading or petition and may consider affidavits of parties or third person or any other proof which the court may require.

Plaintiff in this instance matter, request the court issue an injunction that compels the Houtzdale Administration, to implement compatibility procedure for celling inmates together at their institution. That they be compelled to develop a program that can try and predict whether incoming inmates and their cellmate will be compatible. Also that the Houtzdale Institution cease from celling any inmates together based on random cell space availability alone.

That the Houtzdale Institution be compelled to implement a single cell criteria separate and distinct from Z-Code, as required by the D.O.C. under their **"A" Code Policy - for lifers' and long term offenders'**.

Plaintiff request that SCI-Houtzdale Administrator, be compelled to cease from randomly celling life sentenced prisoners together and compelling them to be disproportionately subjected to penalties of law, where violence may erupt due to incompatibility of randomly double celling inmates together.

Plaintiff is submitting Affidavits to support his contention that administrators' at SCI-Houtzdale practices the Endangerment and Reckless Endangerment of prisoners' lives through random

double celling, without a compatible double celling policies.

Respectfully submitted,

John F. Nole
John Frederick Nole

P.O. Box 1000

Houtzdale, Pa. 16698-1000

DATE: _____

July 22, 2007

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I Adolph H. Johnson, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to random double celling and the celling of incompatible individuals at the SCI- Houtzdale.

Under Houtzdale, random double celling, based solely on the availability of space, I have been compelled to cell with individuals where the incompatibility in our habits, and life style promoted a conflict, which the institution's administrators were aware of. The suspension of compatibility schemes, and random double cellings has subjected me to conflicts in religious, and social differences, and created a potential for a violent living environment.

DATE: 4-10-07

Respectfully Submitted

Adolph H. Johnson EKH 530
Name and Number

COMMONWEALTH OF PENNSYLVANIA :
:
IN THE COUNTY OF CLEARFIELD : Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I Glenn L. Talar, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to unsworn falsification to authorities.

Under random double celling, and the lack of a compatibility program, the Houtzdale Administration has foster a failure to protect by failing to adequately screen inmates who have a potential for stealing and disregarding their cellmates personal property, thus creating an environment that promotes violence. I have personally informed Unit Manager Blake, of incidents where inmates he has randomly celled with me, have used my personal property without permission, and he has refused to have them moved, and because we have noting in common other than being a prisoners.

The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are incompatible causing a conflict, which has resulted in mental and emotional stress, and has been a breeding ground for a violent atmosphere.

DATE: 7/10/07

Respectfully submitted,
Glenn L. Talar GD-9862
Name and Number

COMMONWEALTH OF PENNSYLVANIA

:

IN THE COUNTY OF CLEARFIELD

:

: Civil Action:

No. 2007-00701-CD

AFFIDAVIT

I RAYMOND HOUSTON, the under sign, who hereby swear upon
NAME
my oath, now deposes and says, the forgoing is true and correct
to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above,
and I understand that if I use any false statements in this affi-
davit, they are subject to the penalties of perjury as in 18 Pa.
C.S.A. Section 4904, relating to unsworn falsification to
authorities.

The forgoing information is based solely upon mu own person-
al experiences, as it relates to random double celling and the
celling of incompatible individuals at the SCI- Houtzdale.

Under Houtzdale's random double celling, I have been placed
in living situations where the institution knew the person they
were celling wit me had committed violence upon other inmates
he celled with, and showed no regards for my safety.

Because Houtzdale fails to use the Department of Corrections,
(D.O.C.) compatibility directives, I have endured many incompat-
ible difference, where the person I was locking with, posed a
danger to my safety and well being, and violated my personal
property, creating a hostel and violent atmosphere.

DATE: 6-29-07

Respectfully Submitted,

Raymond Houston EV 4728
NAME AND NUMBER

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:

: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I CHARLES BAENIG, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

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The forgoing information is based solely upon my own personal experiences, as it relates to unsworn falsification to authorities.

Under random double celling, and the lack of a compatibility program, the Houtzdale Administration has foster a failure to protect by not screening inmates who have a potential for violence and have noting in common other than being a prisoners.

The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are known smokers, on non-smoking blocks, causing a conflict of mental and emotional stress, and breeding a violent atmosphere.

DATE: JULY 12, 2007

Respectfully submitted,

Charles Baenig FI2206
Name and Number

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY PENNSYLVANIA

JUL 30 2007

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

JOHN FREDERICK NOLE
PLAINTIFF

VS.

GEORGE W. PATRICK
RENDALL BRITON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

CIVIL ACTION -LAW

No. 2007-00701-CD

FILED

JUL 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby Certify that a true and correct copy of the fore-
going **Motion for Injunction Relief** were served upon the below
listed individual, Attorney for the Defendants' in the Caption
matter, by First Class Mail, Postage Pre-Paid on:

This 27 day of July 2007

Michael J. McGovern
Department of Corrections
55 Utley Drive
Camp Hill, Pa. 17001

DATE:

July 27, 2007

John F. Nole
John Frederick Nole
P.O. Box 1000 - AF-0346
Houtzdale, pa. 16698-1000

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JUL 30 2007

JOHN FREDERICK NOLE,
Plaintiff

CIVIL ACTION LAW

William A. Shaw
Prothonotary/
Clerk of Courts

Vs.

No. 2007-00701-C.D.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

FILED

JUL 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff submits this motion for a preliminary injunction. In determining whether a preliminary injunction should be issued, a court must consider whether the party seeking the injunction has demonstrated that: (1) it has a reasonable likelihood of success of the merits of the underlying claim; (2) no adequate remedy at law exist; (3) it will suffer irreparable harm if the preliminary injunction is denied; (4) the irreparable harm the party will suffer without injunctive relief is greater than the harm the opposing party will suffer if the preliminary injunction is granted; and (5) the preliminary injunction will not harm the public interest.

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whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleading or petition and may consider affidavits of parties or third person or any other proof which the court may require.

Plaintiff in this instance matter, request the court issue an injunction that compels the Houtzdale Administration, to implement compatibility procedure for celling inmates together at their institution. That they be compelled to develop a program that can try and predict whether incoming inmates and their cellmate will be compatible. Also that the Houtzdale Institution cease from celling any inmates together based on random cell space availability alone.

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Plaintiff is submitting Affidavits to support his contention that administrators' at SCI-Houtzdale practices the Endangerment and Reckless Endangerment of prisoners' lives through random

double celling, without a compatible double celling policies.

Respectfully submitted,

John F. Nole
John Frederick Nole

P.O. Box 1000

Houtzdale, Pa. 16698-1000

DATE: July 27, 2007

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I Adolph H. Johnson, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to random double celling and the celling of incompatible individuals at the SCI- Houtzdale.

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DATE: 4-10-07

Respectfully Submitted

Adolph H. Johnson ELH 530
Name and Number

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:

:

: Civil Action:

No. 2007-00701-CD

AFFIDAVIT

I Glenn L. Talar, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

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The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are incompatible causing a conflict, which has resulted in mental and emotional stress, and has been a breeding ground for a violent atmosphere.

DATE: 7/10/07

Respectfully submitted,

Glenn L. Talar GD-9862

Name and Number

COMMONWEALTH OF PENNSYLVANIA :
 :
IN THE COUNTY OF CLEARFIELD : Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I RAYMOND HOUSTON, the under sign, who hereby swear upon
NAME
my oath, now deposes and says, the forgoing is true and correct
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The contents of this Affidavit, is by myself as stated above,
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davit, they are subject to the penalties of perjury as in 18 Pa.
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in living situations where the institution knew the person they
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he celled with, and showed no regards for my safety.

Because Houtzdale fails to use the Department of Corrections,
(D.O.C.) compatibility directives, I have endured many incompat-
ible difference, where the person I was locking with, posed a
danger to my safety and well being, and violated my personal
property, creating a hostel and violent atmosphere.

DATE: 6-29-07

Respectfully Submitted,

Raymond Houston EV 4728
NAME AND NUMBER

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:

: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I CHARLES BAENIG, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

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The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are known smokers, on non-smoking blocks, causing a conflict of mental and emotional stress, and breeding a violent atmosphere.

DATE: JULY 12, 2007

Respectfully submitted,

Charles Baenig FI 2206
Name and Number

FILED

JUL 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 2007-00701-C.D.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 30 2007

PROOF OF SERVICE

Attest.

William R. H.
Prothonotary/
Clerk of Courts

I, John Frederick Nole, hereby certify that I have served
the foregoing Proof of Service along with the AMENDED COMPLAINT,
upon the party listed below:
on , July 27, 2007, this being pursuant to the State Rules of
Civil Procedures, and in the manner listed below, which service
satisfies the requirements of the Pennsylvania State Rules of
Civil Procedures.

SERVICE BY FIRST CLASS MAIL, POSTAGE PRE-PAID.

ASSISTANT COUNSEL
Michael J. McGovern
Pa. Department of Corrections
55 utley Drive
Camp Hill, Pa. 17011

Attorney for the Defendants in this instant matter.

Respectfully submitted,

John F. Nole
John Frederick Nole
P.O. box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

IN THE COURT OF COMMON LEAS
CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE
PLAINTIFF

Vs.

GEORGE W. PARTICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

CIVIL ACTION-LAW
No. 2007-00701-CD

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 30 2007

AMENDED COMPLAINT

Attest.

William A. Brown
Prothonotary/
Clerk of Courts

AND NOW, comes the Plaintiff John Frederick Nole, a prisoner proceeding pro se and files the following **AMENDED COMPLAINT**:

1. Plaintiff, John Frederick Nole, is an adult individual residing at SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000 in Clearfield County, who is the injured party in this cause for complaint.
2. George W. Patrick, is the Superintendent of the Houtzdale Facility, P.O. Box 1000, Houtzdale, Pa. 16698-1000.
3. Randall E. Britton, is the Facility Manager of the Houtzdale Facility, at P.O. Box 1000, Houtzdale, Pa. 16698-1000.
4. Frazer Blake, is a Unit Manager at the SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000
5. John Bailey, is a Counselor at SCI- Houtzdale, P.O. Box 1000 Houtzdale, pa. 16698-1000.
6. On March 31, 1971, Plaintiff John Frederick Nole, entered the then Bureau of Coorection, and has been incarcerated consistently since that time, in the Department of Corrections, (D.O.C.) for the past 36 years.
7. Plaintiff has been single cell since his incarceration, until he entered SCI-Houtzdale, September 30, 2003, where was randomly double cell in the Restricted Housing Unit, (R.H.U., and his life, due to random double celling without a compatibility scheme was placed in danger by the reckless and arbitrary suspension of D.O.C. rules and policies on compatibility, by the defendants.
8. The Defendants mentioned herein have engaged in unlawful,

arbitrary, and bias practices of D.O.C. rules, regulations, and policies against plaintiff.

9. Plaintiff on December 12, 2006, requested through Defendant Blake, to be evaluated for a single cell, and was refused, by both he and defendant Britton, stating, "Plaintiff did not qualify" **SEE: Exhibit "A" thru "A-3"**.

10. As a result of their refusal, plaintiff made an appeal to Defendant Patrick, who never responded writtenly, nor anyone in his stead. **SEE: Exhibit "B"**.

11. Plaintiff, shortly thereafter was called into defendant Bailey's office, and was told, "While he would like to give plaintiff a single cell, he would not recommend a Z-Code".

12. Plaintiff requested that Mr. Bailey document these statements, and record plaintiff concerns for his safety and well being in a double cell situation of a randomly housed individual, and that he be recommended to see the psychiatrist, defendant denied both request.

13. Plaintiff, on or about December 26, 2006, was summoned again to Defendant Bailey's Office, and was told his request for a Z-Code Status was denied, because he did not fit the criteria.

14. Defendant Bailey denied plaintiff upon requested, for a copy of all documentation of said denial and those who participated in the decision making. Plaintiff was denied this request, but was told by defendant Bailey, he was denied because he tried to manipulate a Z-Code, by placing forged documents in a counselor's file, while confined at SCI-Greene County Prison.

15. Plaintiff grievanced single cell denial, and was refused the processing of the grievance by the coordinator thru Defendant Patrick's office. **SEE: Exhibit C-1 thru C-7"**.

16. Plaintiff made a direct appeal to Defendant Patrick, and it was denied by the Defendant.

17. Plaintiff made an appeal to the Chief Grievance Secretary at Central office, and was denied the appeal. **SEE: Exhibit C-1 thru C-7.**

COUNT I- RECKLESS ENDANGERMENT

PLAINTIFF, JOHN FREDERICK NOLE, VS. DEFENDANTS GEORGE PATRICK,

RANDELL BRITTON, FRAZER BLAKE AND JOHN BAILEY.

18. Plaintiff incorporates paragraph 1 thru 17 by reference as if set forth in length.

19. Plaintiff avers that the reckless, carelessness and negligence of defendants patrick, Britton, Blake and Bailey, has consistently placed plaintiff's life in peril, in retaliation for his involuntary and random double celling. **SEE: Exhibits D-2 Sec.**

C-1. A-M 2.

20. Plaintiff avers that the policies and practices of the defednats have been used as punishment, because the defednats have routinely suspended Administrairce Policies on Compatibility Schemes, for thos who involuntarily and are randomly double celled together. Defendants have created an arbitrary housing policy that promotes, and subjects plaintiff to vilent attacks, creates mental and emotion agnuish, negligence and eliminates safety requirements, that would otherwise reasonably protect plaintiff in an in-voluntary radom double celling environment. **SEE: D-3 VI Procedure.**

21. Plaintiff avers, the reckless and negligence by randomly celling inmates together, Defendants Patrick, Britton, Blake and Bailey, uses against plaintiff his involuntary double celling, to violate D.O.C. policies - thus placing: **Young with old, Smokers with non Smokers, Muslims wti Christians, Educated with Uneducated; Violent offenders with non-violent offenders, diseased with the healthy, ect.,** creating a heighten recklessness for violence and subjecting plaintiff to harm because he complains and objects to being double celled.

22. Defendants in direct violation of D.O.C. Policies, on involuntary double celling, have subjected plaintiff to retaliatory treatment. **SEE: Exhibnit D-2 "V thru C"**

23. Plaintiff avers, that defendant Bailey, deliberately refused during various interviews and evaluation processes, to document plaintiff's statemtn of fear for his safety in a double cell, and refused to investigate said statements or recommend other appropriate treatment or resources.

24. Plaintiff states, the defendant Bailey failed to place in plaintiff's record the mental and emotional anxiety platinff

exhibited during interviews and statements of fear that he had been victimized and feared that he may have it happen again thru random double celling. **SEE: Exhibit C-2**

25. Plaintiff states, defendant Blake, consistently ignoring plaintiff's request for single housing, used his involuntary double celling against him, to create reckless and dangerous living circumstances, by suspending compatibility procedures, and randomly celling plaintiff, creating emotion and mental anguish to plaintiff.

26. Defendant Blake, over the course of 6 to 8 months deliberately moved inmates in and out of plaintiff cell without a compatibility scheme, because plaintiff refuse to voluntarily double cell and complained of random cell assignments, based solely on cell availability. **SEE: Exhibit D-1 thru D-4.**

27. As a direct and proximate result of the aforesaid acts of negligence, recklessness, and retaliatory practices, plaintiff was compelled to file numerous complaints to both the institution administration and Central Headquarters. Plaintiff was compelled to have family write letters on his behalf, expressing their concern for plaintiff's safety, and the mental anguish they were experiencing because of previous occasions when plaintiff had been assaulted during his confinement. Plaintiff is now being retaliated against and further threatened by Defendants Patrick, Britton and Blake.

28. Plaintiff avers, defendant Patrick, Britton, and Blake, only after plaintiff filed grievances and had family intervene on his behalf, was retaliated against and moved from his housing unit by defendants Blake, Britton and Patrick, where he was subject to continued random housing, without a penal-logical objective, other than plaintiff's request for single cell status.

SEE: Exhibit E-1 thru E-3; F-1 thru F-3 and G-1 thru G-2.

29. Plaintiff states, that he's been arbitrarily disenfranchised from single celling policies, and discriminated against by the defendants, Patrick, Britton, Blake and Bailey, because of his longevity of confinement, non-violent behavior, and his questioning his removal and disqualification from single cell policies. **SEE: Exhibit "H".**

30. Plaintiff states, defendants' Patrick, Britton, Blake and Bailey, because of arbitrary suspension of D.O.C. policies they have created against plaintiff, unsanitary living environments, because he involuntarily double cells, and defendants have created undue stress by placing him in incompatible living environments that foster violence and physical attacks against plaintiff.

31. The reckless, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, consisted, Inter Alia, of the following:

- A. engaging in un-authorized practices forbidden by the Department of Correction, (D.O.C.) policies and directives.
- B. failing to adhere to safety and sanitary protocols, as established by the D.O.C. policies and directive for double celling.
- C. operating a facility where their policies and practices promote violence against incompatible double celling inmates.
- D. failing to establish a mandated criteria for single celling of life sentence and long term prisoners', as directed by the D.O.C.
- E. failing to comply with policies and procedures required for individuals that involuntarily double cell, because it places lives in danger and promotes violent behavior.
- F. such other acts or omission as may be revealed in the course of discovery, or at trial of this case. **SEE: Exhibit D-1 thru D-4.**

32. Plaintiff states, defendants, Patrick, Britton and Blake choose to maintain hazardous overcrowded condition, for the expressed purpose of randomly celling inmates together based on cell space only, and to avoid implementing D.O.C.'s philosophical opposition to double celling, by deliberately avoiding the creation of a non-Z-Code single cell policy, and thus, purposefully placing plaintiff's life in danger of serious bodily harm, and forcing him under threats and retaliation to remain in an

involuntary double celling, on permanent basis, because he grievances he filed, and had his family interence on his behalf.

SEE: Exhibit E-1 thru G-2.

33. Plaintiff states, the defendants, Patrick, Britton and Blake, have compelled plaintiff to consistenly be confined in double occupancy without the benefit of screening, interview, or evaluation for appropriate housing, under criteria(s) for single celling, because he objects to double cellng. **SEE: Exhibit "J".**

34. Plaintiff states the the defendants, Patrick, Britton, Blake, and Bailey, failed to review plaintiff vulnerability to being a victim of assaults and attacks by other prisoners, and deliberately subject him to harm, where incompatible housing schemes are triggers for violence and attacks.

35. Plaintiff avers, that the defendants, Patrick, Britton and Blake, arbitrarily provides single celling to inmates without Z-Codes, through an arbitrary suspension of non-Z-Code single celling criteria, that would include plaintiff. Plaintiff has been retaliated against and excluded from single celling because he filed grievances against his in-voluntary double and random celling. **SEE: Exhibit "J".**

35. Plaintiff avers, that all the actions and policies aforementioned employed by the defendants, Patrick, Blake, Britton, and Bailey, violates Statutes **18 Pa. C.A.S. §2795 Reckless Endangering another person, by capriciously suspending protective safety compatibility schemes**, and randomly celling individuals, which promotes violence against plaintiff.

36. Plaintiff avers, that the suspension of D.O.C. policies on compatibility schemes by Patrick, Britton, and Blake, has allowed **18 Pa. C.A.S. §2703 and §2704 Assault by a Prisoner, and Assault by a Life Sentenced Prisoner** to be disproportionately, arbitrarily and vindictively applied against him thru their policy of randomly double celling, because he's refused to voluntarily double cell without proper screening and evaluation procedures that are required under D.O.C. policies, which defedants have ignored and suspended, acting in a retaliatory manner against plaintiff. **SEE: Exhiit "I"**

37. Plaintiff avers, that because defendants, Patrick, Britton

and Blake, chooses to maintain dangerously over-crowded conditions, and have suspended double celling safety schemes, they've created for plaintiff, because of his refusal to voluntarily double cell, hostile and agitated environments are manifested by celling arbitrarily and randomly assigning individuals to cells, which fails to meet the requirements for safety as established by the D.O.C.

38. Plaintiff states, the defendants, Patrick, Britton, and Blake, discriminated against him, insofar as, they've allowed single housing of individuals without Z-Codes, and with significant less time of total confinement than plaintiff's thirty seven years (37), and in retaliation because he grieved his double celling, defendants have voided his grandfather status forbidding the losing of things and privileges previously allowed by the D.O.C., including single cell living status.

SEE: Exhibis B-1 thru I.

39. Due to the defedants' actions, they've violated the aforementioned statues' acting under color of law, and they've caused plaintiff to be subject to bodily harm. They've discriminated against him, and on more than one occassion, have employed arbitrary practices, that caused him to suffer continued mental and emotional anguish. The defendnts' have overly punished plaintiff through disenfranchising him because of the significant amount of time he's spent in and under total confinement, by allowing newly established procedures to be applied retroactively, and inva^{ligning} ~~idationg~~ accomplishments made. Defendants have taken away previously established rules and policies held by plaintiff, without a penal-logical objective.

WHEREFORE, Plaintiff, John Frederick Nole, demands Judgment against the Defendants' George, W. Patrick, Rendell Britton, Frazer Blake, and John Bailey, in the amount in excess of Five Thousand Dollars, (\$5,000.00), and any other such negotiated terms deemed appropriate for settlement of damages done to plaintiff by the defendants' in this instant matter.

DATE: July 27, 2007

John Frederick Nole
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

EXHIBITS
A THRU J

Exhibit "A" - 1

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

Mr. Blake, Unit Manager

2. Date:

December 12, 2006

3. By: (Print Inmate Name and Number)

John Frederick Nole, AF-0346

4. Counselor's Name

Mr. Bailey

John F. Nole

Inmate Signature

5. Unit Manager's Name

Mr. Blake

6. Work Assignment

ADD Peer Educator

7. Housing Assignment

FB #43

8. Subject: State your request completely but briefly. Give details.

Mr. Blake:

I would like to speak with you about re-visiting my request for my Z-Code, at your convenience.

Sincerely,

John F. Nole
John F. Nole

9. Response: (This Section for Staff Response Only)

MR Nole,

I spoke with MR Bailey and Deputy Britton and you do not qualify for single cell status.

CC: John Bailey
Deputy Britton

To DC-14 CAR only ☐

To DC-14 CAR and DC-15 IRS ☐

Staff Member Name

BLAKE
Print

[Signature]
Sign

Date

12/12/06

DATE:
SUBJECT:
TO:

12/13/06
Grievance Rejection Form

John Dole AFD346

Mo. Chenchavich

Facility Grievance Coordinator

FB-43

FOR OFFICIAL USE ONLY

172403
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. X _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each **15** working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously **in grievance no.** _____ **dated** _____.

You have provided nothing to substantiate the need for Z code status.

DC-804
Part 1

A - 2

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS**
P. O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

172403
GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR
Ms. Doretta Chencherick

FACILITY:
SCI-HOUTZDALE

DATE:
12-12-06

FROM: (INMATE NAME & NUMBER)
John F. Nole, AF-0346

SIGNATURE of INMATE:

John F. Nole

RECEIVED

WORK ASSIGNMENT:

ADD Peer Education

HOUSING ASSIGNMENT:

FB 43

SUPT'S ASST OFF

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner
3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

DEC 13 2006

SCI - HOUTZDALE
PO BOX 1000 HOUTZDALE, PA

A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804 Part 1 form and one, one-sided 8 1/2" x 11" page).

I've requested to be formally evaluated for Z-Code celling through my unit Manager. This request was arbitrarily, stating in writing I did not qualify for the evaluation, and/or single celling. Without being provided a proper evaluation by those who are better able to address my psychological and emotional concerns, for both my safety and overall welling being. I believe the denial of my request to be evaluated for single living is a deliberate indifference, to my life being putting in jeopardy, under present circumstances. I have spoken with my counselor, and was advised to speak with my Unit Manager - I wrote him and was denied both an the opportunity to speak with him, and to be recommended to speak with a mental health and/or clinical personnel..

B. List actions taken and staff you have contacted, before submitting this grievance.

Spoke to my counsel and wrote to my Unit Manager to try and resolve this issue.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

A-3

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172403
12/13/06 S Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0346

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluated was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, emotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CC: File (3)

Exhibit "B"

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172403
12/13/06 S Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0348

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluate was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, emotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CC: File (3)

B x C 1

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
SCI- H021

DATE:
SUBJECT:
TO:

12/27/06
Grievance Rejection Form

John Nole AFO346

Mo. Chenchauk
Facility Grievance Coordinator

FB-43

FOR OFFICIAL USE ONLY

173747
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each **15** working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. X _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously **in grievance no.** 11070 **dated** 12/24/03.

Your last sentence sums up
your real reason for wanting
2 code status

DC-804
Part 1

C-2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Ms. Doretta Chencherick	FACILITY: SCI-Houtzdale	DATE: 12-26-06
FROM: (INMATE NAME & NUMBER) John Frederick Nole, AF-0346	SIGNATURE of INMATE: <i>John F. Nole</i>	RECEIVED SUPT'S ASST OFF DEC 27 2006 SCI - HOUTZDALE PO BOX 1000 HOUTZDALE, PA
WORK ASSIGNMENT: ACD Peer Educator	HOUSING ASSIGNMENT: FB #43	

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner
3. List in Block B any actions you may have taken to resolve this matter. Be sure to

A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804 Part 1 form and one, one-sided 8 1/2" x 11" page).

On December 26, 2006, I was informed by my Counsel Mr. John Bailey, my request to be formally evaluated for a Z-Code single cell status was denied, based on the alleged imposition that I attempted in 2003 to manipulate a Z-Code, through forged documents, and that I did not fit the criteria for Z-Code. It was also told to me that, single celling through the A-Code procedures were not applicable at this prison, as more rational for the denial.

I am grievancing this procedure on the basis, I was denied a copy of the written decision of those individuals who participated in this decision making. I was denied the opportunity to speak with a clinical person, and/or psychologist, concerning my request, and have documented the emotional and psychological anxieties I experience with regards to this request.

I have been arbitrarily denied documentation, demonstrating or showing, what circumstances were used to denied request and evaluations for a Z-Code, and under present date policies.

(See Reversed Side Pg. 2)

B. List actions taken and staff you have contacted, before submitting this grievance.

I spoke with my counsel regarding this situation, and was informed there was not appeal procedures, and that I was not allowed a copy of the decision making.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

C-3

December 29, 2006

SUBJECT: Grievance Appeal
173747 12/27/06

TO : George Patrick, Supt.

FROM : John Frederick Nole, AF-0348
FB #43

Supt. Patrick:

On two occasions now, grievances I've submitted have been foiled, to circumvent my being able to appeal these issues through the complete process.

No. 172403 was denied processing, and then, I received an informal interview from my counselor, who submitted a vote sheet, without recording any of my concerns and issues for compliance with policies for Z-Codes and/or single celling consideration.

The denial of processing my grievance, and then attempting to comply with the grievance issues, I originally made, shows a deliberate impedence to the process of having my issues addressed and have an opinion recorded for any further action that might need to take place.

I submitted a second grievance following the results of the submitted vote sheet. This grievance addressed a denial of the material documentation of the vote, and a question of what issues were looked at, and the rationale used to denied me. Without a statement of those issues and concerns addressed in the denial, the conclusion was arbitrary, bias and prejudicial.

This grievance No. 173747 was also denied processing on 12/27/06. I am personally concerned about the prejudice that is being developed against me because I am pursuing an avenue that is open to all inmates and I believe is being denied me arbitrarily, when I know I fit the criteria under multiple circumstances.

If the rationales used, and reported by Mr. Bailey, who stated I attempted to forge documents using a High Ranking Official signature. The mental and emotional state of that individual may suggest, they will go to any extreme to show how desperate they are? These are just some of accusation and prejudices, being placed upon and conveniently used at the prison's whim, to denied implementation of policy.

I'm requesting to be able to send both my grievances back through for official processing and appeal rights that are allowed from unfavorable decision.

Thank you,

CC: File

C-4

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Houtzdale
Office of the Superintendent
January 4, 2007

SUBJECT: Appeal of Rejected Grievance #173747

TO: John Nole, AF0346
FB-43

FROM: George N. Patrick
Superintendent

George M. Patrick

I have reviewed this appeal, the initial grievance, and the response provided by Ms. Chencharick, Facility Grievance Coordinator.

I find the rejection of the appellant's initial grievance by the Facility Grievance Coordinator to be appropriate, and I concur with it. Specifically, the issue grieved was reviewed and given a response previously via grievance #71070 dated 12/24/03. The decision to deny the appellant's request for a single cell was not "arbitrary, bias and prejudicial." Rather, there is no compelling reason to consider such a housing assignment at this time.

Uphold Initial Response.

GNP:mlb

c: Ms. Chencharick
DC-15
file

← - 5

January 8, 2007

SUBJECT: DENIAL OF GRIEVANCE PROCESSING AND APPEALS
Nos. 172403 and 173747

TO : Ms. Sharon M. Burke,
Chief Grievance Office

FROM : John Frederick Nole, AF-0348
SCI-Houtzdale

Ms. Burke:

Two separate grievances were submitted for processing at SCI-Houtzdale and were arbitrarily denied processing. The nature of these grievances were well within the prescribed area of issues to be addressed through the grievance process. In accordance with the DC-ADM-804, legitimate denial of issue grieved, can be appealed to those in authority that have the authority to resolve disputes. My grievances were not allowed to be processed in a regular manner, as prescribed by regulations, and the denials were arbitrary.

I made a formal request of my unit Manager to be evaluated for a Z-Code. The evaluation was denied. I made a grievance of the denial, it was denied processing. I appealed to Supt. Patrick, and was subsequently given a interview. There was not recording of my concerns, during this interview. Clearly, the interview was done so that the grievance process could be circumvented, and deny the appeal avenues of pursuit. See: Grievance Rejection Form #172403.

Upon receiving the decision that I was denied my request for Z-Code status, and being denied a copy of the rational for the decision, I filed a grievance, and stated the procedures that I used.. This was also returned unprocessed. I filed an appeal, requesting that both my submitted un-processed grievances, be allowed to be resubmitted for proper processing. I was denied. SEE: No. 173747.

The rational for not processing my complaint, was bias, insofar as, the information recently supplied by my present Classification, was not a part of any previous filing under #71070, as stated, by the Grievance Coordinator.

I originally entered the Bureau of Correction under a single cell classification in 1971; and was Grandfathered into single cell status, which has been applicable every where I've been except here at Houtzdale. Here I have been denied single cell housing. The Z-code was established in approximately 1985, and was not designed to punish those individuals that had already been confined in the system under life sentences particularly, and single cell housing.. SCI-Houtzdale, has never established a single cell policy outside of an Z-Code process, ever! and is used Z-Coding to disenfranchise those who have spent 35 years or more in corrections.

The emotional and psychological affect of having to adapt. The stress

C-6

2

and anxiety created by the lack of compatibility scheme. The placing of me in situations where my time of confinement is being used to punish me under double celling, has created circumstances where I am vulnerable, to assault, and has created circumstances where Ps. Laws can be disproportionately applied in assaulting situation.

I believe, D.O.C. policies, permit convicts to have copies of documents relative to decision made on their behalf, if for no other reason than to address factual issue raised and used in the appeal of decision made on their behalf. I was denied the rationale that was used for not granting me single cell status.

I'm requesting that the previous submitted grievances be processed and addressed in a proper manner consistent with the grievance policies, and I be given copies of the documents generated to deny my request.

CC: File (3)

C-7

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
Secretary's Office of Inmate Grievance's and Appeals
(717) 975-4954
January 17, 2007

SUBJECT: Grievance Correspondence-Grievance No. 173747

TO: John Nole, AF-0346
SCI Houtzdale

FROM: Secretary's Office of Inmate Grievances & Appeals *fw*

This is to acknowledge receipt of your letter to this office. Upon review of your letter, it is the decision of this office to file your letter without action. You have failed to comply with the provision(s) of the revised DC-ADM 804 effective January 3, 2005.

In accordance with the provisions of the DC-ADM 804, VI D, 1g, a proper appeal to final review must include photocopies of the Initial Grievance, Initial Review, the Appeal to the Facility Manager, and the Facility Manager's decision. The text of your appeal(s) to this office shall be legible, presented in a courteous manner, and the statement of facts shall not exceed two pages.

Review of the record reveals that your appeal(s) is incomplete. You have failed to provide this office with the required documentation that relates to your appeal(s). You are not permitted to appeal to this office until you have complied with all procedures established in DC-ADM 804. **You have ten working days from the date of this memo to provide this office with documents needed to conduct final review. Any further correspondence from you regarding your appeal(s), which does not contain the required documents, will result in a dismissal of your appeal(s).**

/bw

cc: Superintendent Patrick
DC-15

Grievance Office
Central File

.....
"Our mission is to protect the public by confining persons committed to our custody in safe secure facilities, and to provide opportunities to inmates to acquire the skills and values necessary to become productive law-abiding citizens, while respecting the rights of crime victims."

ADMINISTRATIVE MEMORANDUM

Administrative Manual
Volume VI
OM-082.07

SUBJECT: Inmate Housing - Double-Celling

TO: Superintendents

FROM: *Glen R. Jeffes*
Glen R. Jeffes
Commissioner

I. PURPOSE AND SCOPE:

This Administrative Memorandum establishes policy and procedures for double-celling in the Department of Corrections. It applies to all state correctional institutions and regional correctional facilities.

II. GENERAL POLICY:

The administration of the Department of Corrections is philosophically opposed to double-celling, confining two inmates in a cell originally designed for one. The practice was implemented in response to continued overcrowding and shall remain in place only until it is possible, consistent with good correctional practices, to provide sufficient appropriate cell space to afford each inmate a single occupancy cell. It may not be used as punishment.

III. SELECTION OF CELLS:

Selection of cells to be used for double occupancy should be made pursuant to the following guidelines.

- ✓ * — A. Cells in administrative or disciplinary custody may be used for double occupancy only after careful review of those inmates to be double celled for temporary periods, but not to exceed 30 days. Inmates to be continued in this status beyond 30 days require written approval of this office. Inmates in this status shall be exercised daily and showered a minimum of three times per week.
- B. Every attempt should be made to designate cells in the selected locations that afford the most appropriate access, supervision, and control.
- C. The larger cells should be used first.
- D. Cells which present the fewest difficulties in providing adequate security and sanitation should be used first.

IV. DURATION OF DOUBLE-CELLING:

Individual inmates required to live in double occupancy cells on an involuntary basis should be moved to single housing when appropriate single occupancy cells become available.

V. SELECTION OF INMATES TO BE DOUBLE-CELLED:

The selection of inmates to be double celled involves a review of numerous factors. Selected factors are mentioned below as suggestions. The lists, however, are not exhaustive, and other factors deemed appropriate by the institution may also be weighed.

A. ~~The following inmates should not be double-celled:~~

1. ~~Inmates of opposite sexes.~~
2. ~~Same sex inmates with known or suspected homosexual tendencies.~~
3. ~~Inmates who are emotionally or mentally disturbed.~~
4. ~~Inmates in Diagnostic Centers should not be double-celled without extreme caution. The inmates who have been classified and are awaiting transfer to another institution should be considered before those who are unclassified. The practice of double-celling in the Diagnostic Centers or Assessment Units is an exception to the policy stated in OM-102, Chapter VII, subsection 01, B. hereby authorized to accomplish necessary double-celling.~~
- *-5. Inmates in administrative and disciplinary custody should not be double-celled without a thorough review and careful consideration by an appropriate staff body.

B. Voluntary:

1. Inmates who agree to share a cell should be the first considered for double-celling.
2. Requests to share a cell should be carefully evaluated to ensure that it is appropriate for the requesting inmates to be housed together. Voluntary double-celling may be continued indefinitely as long as double-celling is necessary. This shall not be construed as a right of inmates to be double-celled.

C. Involuntary:

1. The institution should attempt to double-cell inmates who will be compatible with each other. In determining compatibility, some factors to be considered include:
 - a. Familial relationship, e.g., brothers, cousins
 - b. Age
 - c. Race and ethnic biases of the inmates to be housed together
 - d. Interests
 - e. Geographic identity
 - f. Length of sentence
 - g. Program assignment (job, education, etc.)
 - h. Program level
 - i. Security needs (escape, substance abuse, violence, deviate sexual acts, etc.)

- j. Behavioral disposition and attitude
- k. Group identification (gangs, etc.)
- l. Sophistication (prior incarceration, etc.)
- m. Other factors deemed appropriate by the institution

2. Involuntary double-celling of appropriate inmates may be continued as long as necessary. No inmate may refuse to double-cell.

VI. PROCEDURE:

A. Identification of inmates for possible double-celling:

- 1. Inmates may request consideration.
- 2. Staff may suggest inmates for consideration.

B. Interviews: Each inmate considered for double-celling should be interviewed separately by staff to determine willingness and to identify any possible problems or pressures being applied to inmate.

C. Staff approval: All criteria should be considered and appropriate staff shall approve or disapprove double-celling for each case.

✓ *-D. Orientation: Each inmate involved in double-celling will be informed of the conditions which apply. In this orientation, staff will include rules governing behavior as well as those governing the conditions and contents of the cell. Also included will be the procedures for requesting consideration for termination of double-celling.

✓ *-E. Monitoring: Inmates doubling up should be properly supervised and interviewed regularly to ensure problems are quickly identified and corrected.

VII. DORMITORIES:

Dormitories established to accommodate special programs, such as the forestry camps, are not considered part of the General Policy or Procedures of the administrative memorandum. ~~Dormitories established and used only for the purpose of accommodating the overcrowding shall be governed by the provisions of this administrative memorandum and should continue only until it is possible consistent with good correctional practices to provide sufficient appropriate cell space to afford each inmate a single occupancy cell.~~

VIII. INSTITUTIONAL AUTHORITY:

Each institution shall have the authority to develop local implementation procedures consistent with this administrative memorandum. Any exception to the policies and procedures herein contained must be approved in writing by my office.

IX. PERIODIC REVIEW:

This administrative memorandum shall be reviewed periodically (no less than annually) to ensure that it is meeting the objective.

X. EFFECTIVE DATE:

This Administrative Memorandum shall be effective immediately and supersedes the November 10, 1983 memorandum entitled, "Inmate Housing - Double-Celling" and all other previous communique on this subject.

GRJ:jb

cc:
Deputy DeRamus
T. Otto
Regional Directors
Department Directors
D. Gearhart
F. Gillis
K. Robinson

Ex E-1

Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

December 20, 2006

Mr. Jeffrey Beard, Secretary
Department of Correction
P.O. Box 598
Camp Hill, Pa. 17001-0598

Dear Mr. Beard:

I am writing this letter on behalf of my brother John Frederick Nole, who is housed at your prison in Houtzdale. My brother Freddie, is a lifer and has been in prison now for over 37 years.

My Brother, was recently approached by his Unit Manager in October of this year, and asked if he wanted to be transferred closer to home. He said yes. He did not know at the time our mother had been hospitalized several time, and has recently been advise, she cannot endure long trips. But he did not request a promotional transfer on his own, it was however, offered to him. My brother's transfer was denied because his classification is an escape risk and security threat, and he will not be considered for at least five years. He's been at his present location for over 3 years now. But has been in the middle and western part of the state over 17 years.

My brother recently informed me he tried to get a Z-Code housing assignment based on this classification, and your recent issuing of a new Long Term Confinement and Administrative Custody Placement Directive which places my brother in jeopardy, due to this Escape/Security Risk History.

The transfers that have been attributed to my brother over the last 17 years that he's been between Huntingdon and now Houtzdale, was attributed to him being an escape risk and a security threat. I don't believe my brother is either, but your prisons have created this history for him, and I don't believe that my brother should be place in situations where he can succumb to circumstances that will further jeopardize his liberty, and possibly curtail program and family interaction, because of someone else misbehavior.

This escape risk classification is been established to deny my brother the opportunity to get closer to our families, but does not have the substance to provide him living circumstances so his life and livelihood is not put in danger.

As far as I know, my brother has been allowed single living situation based on his time of confinement every where he's been, and until recently had been given consideration at Houtzdale, but is now being deny the opportunity to even be evaluated by Houtzdale Staff, for single housing, based on this new information.

If my brother is an Escape Risk and Security Threat, as he's been classified, there is no reason for him not to have a single celling situation, to reduce this attributed history from continuing.

E-2

2

. Mr. Beard, my brother has tried to resolve this with the Moutzdale Administration, to no avail, and has sought out our family for assistance, and we will do whatever we must to assure our brother is not hurt, and has the opportunity to not be unduly hurt and/or injured by prison stigmas.

I thank you for your assistance in reviewing this matter, and look forward to any response you feel appropriate.

Sincerely,

Loretta Nole

CC: Brother
File

E-3



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

January 8, 2007

Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150


RE: J. Nole, AF0346

Dear Ms. Nole:

Your letter dated December 20, 2006 regarding your brother's request to have a Z code place on his file has been received by my office for response. Please understand that program codes, specifically Z codes, are assigned by the institutional staff, not Central Office. There are specific criteria outlined for inmate's requesting Z codes and the institution is in the best position to determine whether Mr. Nole meets the specific criterion. I would suggest that he discuss this matter with his counselor and Unit Management Team at SCI-Houtzdale.

Thank you for your interest and support of Mr. Nole. I trust that this addresses your concerns.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/sp

cc: Deputy Secretary Moore
Superintendent Patrick
Corr. #: 2006-C17-000000168
Central File
File

Ex. 'F' - 1

930 Mill Grove Drive
Norristown, Pa. 19403
April 4, 2007

Jeffrey Beard, PhD
Secretary
Department of Corrections
PO Box 598
Camp Hill, Pa. 17001-0598

Dear Secretary Beard,

My sister-in-law, Loretta Nole, wrote to you previously about her brother and my husband, John F. Nole AF0346, who is a prisoner at SCI-Houtzdale, and his cell situation. Your response was that he should deal with the staff at SCI-Houtzdale regarding evaluation for a Z-code.

My husband has attempted to be evaluated for the Z-code, but he feels that he has not been properly evaluated for a single cell status. He feels that his requests to staff to be properly evaluated have resulted in him being transferred to another block, to another double cell situation. Several weeks ago, I attempted to speak with Superintendent Patrick about his cell situation and the transfer and was told that I would have to speak with Major Close. I left my phone number with his secretary, but have yet to receive a return call. This is not the first time that staff there has not responded to a communication that I have addressed to them.

I have also enclosed some correspondence from staff to my husband regarding his cell situation. How should we receive the comments made? "Perhaps you will have better luck at another facility?"

My family and I are concerned about our loved one and hope that this letter will not result in any retaliatory treatment of either him or us.

My husband has been in prison since 1969, when he was seventeen years old, is serving a life sentence and is currently almost fifty-five and one-half years of age. He has made the most of his time in prison, being active in many organizations and programs, often in a leadership role, going to school and working. We have been married for almost 23 years; we have known each other for 25 years.

When I first knew my husband, every prisoner was single celled. I was aware that when double cells began in the 1980's, that lifers who were in the system at the time were told that they would continue in the single-cell status. When did this stop? My husband is not accustomed to having to live with someone in such a confined space, after all of these years. Until recently, my husband always lived by himself in many prisons, but recently it has become revolving door cellmate, since his transfer to SCI-Houtzdale. Why has this changed?

" P-2 "

Why has my husband's request to be properly evaluated for a Z-code been denied? It is my understanding that there are also A-codes for people in my husband's situation. Why is he not eligible for that with his age, time and sentence? What are other programs for single cells, besides Z-codes, because I believe that there are prisoners with less time in than my husband with single cells who do not have Z-codes at the prison? What is the program that allows people with less time in than my husband to live in a single-cell situation without having a Z-code? When will my husband be able to live alone again?

This is not the first time that procedures available have not been afforded to my husband at this prison. My husband suffers from high-blood pressure, which is treated, but adequate water and time was not provided to him for a random drug test and he was not allowed to give hair, which he asked to do many times. Why was this not allowed? It seems that DOC policy allows for hair to be a way to do the random drug test. My husband tried to provide a sample, but was unable to with the amount of water and time provided. Urinating is not a voluntary bodily function. The bladder needs to be sufficiently full for one to be able to urinate; this requires an adequate amount of fluid and time, which should be provided and was not provided. Why are prisoners not given enough to drink and enough time? The blood pressure medicine that my husband is administered affects the fluid levels in his body. My husband has no history of substance abuse. I am a hard-working, tax-paying, college-educated professional and a law-abiding citizen. I am all for keeping our prisons drug-free. I also expect prisoners, including my husband, to have every opportunity available to them to be able to prove that they are not abusing any substance. Since the system treats those who are not be given enough to drink or time the same as people who have positive test results, procedures need to be followed to make certain that those who are attempting to provide a sample have enough time and fluids to do so, or let them provide a hair sample, if they are having difficulty.

Thank you for your personal reply addressing my concerns and questions regarding my husband.

Sincerely,

Susan Beard-Nole

Cc: Rep. Carole Rubley



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

Ex. F-3

April 16, 2007

Susan Beard-Nole
930 Mill Grove Drive
Norristown, PA 19403

Re: John Nole, AF-0346

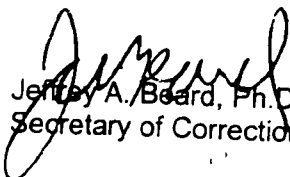
Dear Ms. Waite,

I am in receipt of your letter concerning obtaining a single cell and the random drug testing for your husband John Nole, AF-0346, who is incarcerated at SCI Houtzdale.

Your husband has been evaluated for single cell status. It has been determined that he does not meet Department of Corrections criteria for a single cell. The recent dramatic increase in the population has resulted in all available cell space being utilized. Your husband may have been in a single cell previously, but he has never had single cell status. Therefore, he is appropriately placed in a double cell. Your husband was provided with the allotted time and fluid to provide a sample for a random drug test, which has been proven to be adequate by national testing data. The request for a hair sample test is only provided to refute a positive test, not for failure to provide a sample.

I assure you our Department is committed to ensuring that each institution is operated in a manner that complies with all Department of Corrections policies and procedures.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/krh

cc: Superintendent George Patrick
Keri Moore #2007-C17-000000069
Central File
File

" G-1 "

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

March 21, 2007

Mr. George Patrick Superintendent
Houtzdale Prison - P.O. Box 1000
Houtzdale, Pa. 16698-1000

Dear Mr. Patrick:

I'm writing on behalf of my brother John F. Nole.

I wrote Secretary Beard a while back concerning my brother's living circumstances at your prison. I was informed that the issue must be handled at the facility level by my brother. After a lengthy conversation with my brother, I've been assured he's addressed this issue with you and your staff, on a couple of occasions.

Mr. Patrick, I would like to know, if I may, why my brother, after never needing a Z-Code to maintain his single cell status throughout his almost 38 years in prison, now needs a Z-Code to acquire single housing, but has been refused by you and your staff, without a formal evaluation? I would also like to try and understand the rational of why my brother it appears, is punished and treated worst with the more time he puts in?

Freddie, has been at your facility now for shortly over three years, and from speaking with him, he seems to have done some positive things and gives his time and services; is negative behavior rewarded more than positive behavior?

Mr. Patrick, I'm requesting for my own peace of mind, why my brother, with all the time that he has in, cannot be given some type of consideration?

I do believe my brother when he tells me his mental and emotional well being is threaten, by having little or nothing in common with, as he put it, "THE NEW BREED OF PRISONER".

My brother has never had a problem maintaining single cell living at any of the other places, and that is been without a Z-Code. Is the number of years a person is in prison, not a factor for single cell living?

In closing Mr. Patrick, my family and I encourage my brother to do his best and work with those around him, has he not done this?

I plead with you to address this issue, it's an emotional stress on all of my family to think my brother is being placed in living situation where he can be hurt because he has a different way of living in your prison than most who come in and are there. I know my brother to be very responsible.

Very truly yours,

Loretta Nole

CC: File

Jeffrey A. Beard, Ph.D.
Secretary



George N. Patrick
Superintendent

Exhibit

G-2

**Pennsylvania Department of Corrections
State Correctional Institution at Houtzdale**

P.O. Box 1000
Houtzdale, PA 16698-1000

PHONE: (814) 378-1000 FAX: (814) 378-1030

April 4, 2007

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150

Re: John Nole, AF0346

Dear Ms. Nole:

This is in response to your correspondence dated March 21, 2007, regarding your brother, John Nole AF0346.

The Z-code is a program code assigned to inmates for single celling purposes. In most instances, this is assigned to an inmate who poses a threat to others if double celled. Inmates serving long term sentences are not specifically granted a Z-code for this reason alone. Our intent is to carefully screen and limit unnecessary single-cell assignments due to the absence of available Departmental bed space.

The Pennsylvania Department of Corrections' inmate population is growing at a startling rate. The inmate population at SCI-Houtzdale is a reflection of this growth. Although the Department is exploring additional new housing initiatives and maximizing the use of community corrections bed space, there does not appear to be any imminent relief which would allow us the leisure to house your brother in a cell by himself. While I am sympathetic to your concerns, be assured that your brother does have some ability to choose his cellmate on the housing unit in order to minimize his contact with inmates he feels are less desirable.

I trust this addresses your concerns.

Sincerely,

George N. Patrick
Superintendent

GNP:CG

c: Major Close
Mr. C. Garman

DC-15
file

"Our mission is to protect the public by confining persons committed to our custody in safe, secure facilities, and to provide opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens; while respecting the rights of crime victims."

Ex "H"

John Frederick Nole, AF-0346

March 4, 2007

Mr. Frazier Blake,
F-Block Unit Manager

Dear Mr. Blake:

I've written you prior, asking for consideration for single cell house under both the Z-Code and A-Code, both of which have been denied. I am again requesting single cell living status. I believe strongly, while you have the authority to put me in a protective cell status, you've refused to do so lately, for any significant period of time. I believe, I have earned this consideration. I am a contributor to the betterment of the institution. I volunteer both my time and my services. I am among the top 1 to 5 people at Houtzdale with over 35 years in the D.O.C., and in over three year at the institution, I have maintain relatively good behavior.

While I differ in my belief from yours, that I do not qualify for a Z-Code, single living situation, since that is all that is offered at this prison, certainly my overall adjustment, program contribution, time of confinement and involvement, warrants some consideration for single cell protection, given to individuals on other housing units, and who contribute nothing towards the better of this institution.

While you may deem having me adjust and readjust to different cell-mates on weekly basis, and I'm not down-playing your generosity, that is more mental and emotionally stressful.

I've never had a Z-Code, because I've always been given a grandfather privilege of having been in corrections before codes were required. Surely you are aware, as Unit Manager, under what circumstances I live, is your call?

Thank you for the time you have given this communication.

Sincerely,

John F. Nole
John Frederick Nole

CC: File

*MR Nole,
you are not getting a Z-code.*

*Blake - Ashley
3/5/07*

EX 121000
T

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) Supt. Patrick		2. Date: March 7, 2007	
3. By: (Print Inmate Name and Number) John F. Nole, AFO346 John F. Nole Inmate Signature		4. Counselor's Name UNKNOWN	
		5. Unit Manager's Name UNKNOWN	
6. Work Assignment ADD Peer Educator		7. Housing Assignment EA 4	
8. Subject: State your request completely but briefly. Give details. Supt. Patrick: While I understand I don't have a right to live in any specific area of the inst. I should not be punished because I avail myself of procedures to inquire about various policies. Since I may very well die in prison how I live and under what circumstances is important to me. Since this inst. does not allow single cell living except by way of Z-Code, and when I requested valid information why I don't qualify, I'm deemed and labeled disruptive and transferred from the unit by mr.			
9. Response: (This Section for Staff Response Only) John - "Contributions" for Month Any "Contributions" by your Mick are overshadowed by your neediness. Due to the overpopulation, I do not have the luxury of handling our single cells. You don't qualify for a Z Code perhaps you will To DC-14 CAR only <input type="checkbox"/> To DC-14 CAR and DC-15 IRE <input type="checkbox"/>			

Staff Member Name

For a 2nd
BATTM
Facility

Sign

Date 3/7/07

MASSORS
cc: Mr. BUCK

Blake via Deputy Britton's Instructions?
BECAUSE I'M ASKING legitimate questions?
I Really Am CONCERN About my Safety
And well being if Just one STAFF
member can deem me a threat
to the normal orderly running of the
inst. And transferred me on a whim.
This transfer come one day
after I asked Mr. Blake to
TAKE INTO CONSIDERATION my
time in and allow me protective
cell time, a policy that is rendered
to those who ARE CONTRIBUTORS.
How should I view this treatment
Sir?

John F. Rolle

Ex 4 J

Classification System Custody Levels	
Custody Level	Type of Supervision
1	Community Corrections (Pre-Release)
2*	Minimum
3	Medium
4	Close
5	Maximum

*Custody Level 2 inmates are not permitted outside of the institutional perimeter without additional approval and assignment of Program Codes.

Program Code	Custody Level	Definition
A	2, 3	House in Single Cell (Long Term Offender) Note: This is based upon favorable adjustment and space availability.
C	1, 2	Community with Supervision
D	5	Death Penalty
E	1	Educational/Vocational
F	1	Furlough
G	1	Community Corrections Center
H	3, 4, 5	High Risk
M**	2	Minimum Supervision
N	N/A	New Commitment
O	1, 2, 3, 4, 5	Observation
P	2, 3, 4, 5	Parole Violator Pending
R**	2	Regular Supervision
S	5	Solitary Confinement
T	5	Temporary RHU
W	1	Work Release
X**	2	Armed Supervision
Y	2, 3, 4, 5	Natural Life Sentence
Z	1, 2, 3, 4, 5	House in Single Cell

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 2007-00701-C.D.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 30 2007

PROOF OF SERVICE

Attest.

William A. Nole
Prothonotary/
Clerk of Courts

I, John Frederick Nole, hereby certify that I have served
the foregoing Proof of Service along with the AMENDED COMPLAINT,
upon the party listed below:
on , July 27, 2007, this being pursuant to the State Rules of
Civil Procedures, and in the manner listed below, which service
satisfies the requirements of the Pennsylvania State Rules of
Civil Procedures.

SERVICE BY FIRST CLASS MAIL, POSTAGE PRE-PAID.

ASSISTANT COUNSEL
Michael J. McGovern
Pa. Department of Corrections
55 utley Drive
Camp Hill, Pa. 17011

Attorney for the Defendants in this instant matter.

Respectfully submitted,

John F. Nole
John Frederick Nole
P.O. box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

IN THE COURT OF COMMON LEAS
CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE
PLAINTIFF

Vs.

GEORGE W. PARTICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

CIVIL ACTION-LAW

No. 2007-00701-CD

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 30 2007

AMENDED COMPLAINT

Attest.

William A. H.
Prothonotary/
Clerk of Courts

AND NOW, comes the Plaintiff John Frederick Nole, a prisoner proceeding pro se and files the following **AMENDED COMPLAINT**:

1. Plaintiff, John Frederick Nole, is an adult individual residing at SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000 in Clearfield County, who is the injured party in this cause for complaint.
2. George W. Patrick, is the Superintendent of the Houtzdale Facility, P.O. Box 1000, Houtzdale, Pa. 16698-1000.
3. Randall E. Britton, is the Facility Manager of the Houtzdale Facility, at P.O. Box 1000, Houtzdale, Pa. 16698-1000.
4. Frazer Blake, is a Unit Manager at the SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000
5. John Bailey, is a Counselor at SCI- Houtzdale, P.O. Box 1000 Houtzdale, pa. 16698-1000.
6. On March 31, 1971, Plaintiff John Frederick Nole, entered the then Bureau of Coorection, and has been incarcerated consistently since that time, in the Department of Corrections, (D.O.C.) for the past 36 years.
7. Plaintiff has been single cell since his incarceration, until he entered SCI-Houtzdale, September 30, 2003, where was randomly double cell in the Restricted Housing Unit, (R.H.U., and his life, due to random double celling without a compatibility scheme was placed in danger by the reckless and arbitrary suspension of D.O.C. rules and policies on compatibility, by the defendants.
8. The Defendants mentioned herein have engaged in unlawful,

arbitrary, and bias practices of D.O.C. rules, regulations, and policies against plaintiff.

9. Plaintiff on December 12, 2006, requested through Defendant Blake, to be evaluated for a single cell, and was refused, by both he and defendant Britton, stating, "Plaintiff did not qualify" **SEE: Exhibit "A" thru "A-3"**.

10. As a result of their refusal, plaintiff made an appeal to Defendant Patrick, who never responded writtenly, nor anyone in his stead. **SEE: Exhibit "B"**.

11. Plaintiff, shortly thereafter was called into defendant Bailey's office, and was told, "While he would like to give plaintiff a single cell, he would not recommend a Z-Code".

12. Plaintiff requested that Mr. Bailey document these statements, and record plaintiff concerns for his safety and well being in a double cell situation of a randomly housed individual, and that he be recommended to see the psychiatrist, defendant denied both request.

13. Plaintiff, on or about December 26, 2006, was summoned again to Defendant Bailey's Office, and was told his request for a Z-Code Status was denied, because he did not fit the criteria.

14. Defendant Bailey denied plaintiff upon requested, for a copy of all documentation of said denial and those who participated in the decision making. Plaintiff was denied this request, but was told by defendant Bailey, he was denied because he tried to manipulate a Z-Code, by placing forged documents in a counselor's file, while confined at SCI-Greene County Prison.

15. Plaintiff grievanced single cell denial, and was refused the processing of the grievance by the coordinator thru Defendant Patrick's office. **SEE: Exhibit C-1 thru C-7"**.

16. Plaintiff made a direct appeal to Defendant Patrick, and it was denied by the Defendant.

17. Plaintiff made an appeal to the Chief Grievance Secretary at Central office, and was denied the appeal. **SEE: Exhibit C-1 thru C-7.**

COUNT I- RECKLESS ENDANGERMENT

PLAINTIFF, JOHN FREDERICK NOLE, VS. DEFENDANTS GEORGE PATRICK,

RANDELL BRITTON, FRAZER BLAKE AND JOHN BAILEY.

18. Plaintiff incorporates paragraph 1 thru 17 by reference as if set forth in length.
19. Plaintiff avers that the reckless, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, has consistently placed plaintiff's life in peril, in retaliation for his involuntary and random double celling. **SEE: Exhibits D-2 Sec. C-1. A-M 2.**
20. Plaintiff avers that the policies and practices of the defendants have been used as punishment, because the defendants have routinely suspended Administrative Policies on Compatibility Schemes, for those who involuntarily and are randomly double celled together. Defendants have created an arbitrary housing policy that promotes, and subjects plaintiff to violent attacks, creates mental and emotional anguish, negligence and eliminates safety requirements, that would otherwise reasonably protect plaintiff in an involuntary random double celling environment. **SEE: D-3 VI Procedure.**
21. Plaintiff avers, the reckless and negligence by randomly celling inmates together, Defendants Patrick, Britton, Blake and Bailey, uses against plaintiff his involuntary double celling, to violate D.O.C. policies - thus placing: **Young with old, Smokers with non Smokers, Muslims with Christians, Educated with Uneducated; Violent offenders with non-violent offenders, diseased with the healthy, ect.,** creating a heightened recklessness for violence and subjecting plaintiff to harm because he complains and objects to being double celled.
22. Defendants in direct violation of D.O.C. Policies, on involuntary double celling, have subjected plaintiff to retaliatory treatment. **SEE: Exhibit D-2 "V thru C"**
23. Plaintiff avers, that defendant Bailey, deliberately refused during various interviews and evaluation processes, to document plaintiff's statement of fear for his safety in a double cell, and refused to investigate said statements or recommend other appropriate treatment or resources.
24. Plaintiff states, the defendant Bailey failed to place in plaintiff's record the mental and emotional anxiety plaintiff

exhibited during interviews and statements of fear that he had been victimized and feared that he may have it happen again thru random double celling. **SEE: Exhibit C-2**

25. Plaintiff states, defendant Blake, consistently ignoring plaintiff's request for single housing, used his involuntary double celling against him, to create reckless and dangerous living circumstances, by suspending compatibility procedures, and randomly celling plaintiff, creating emotion and mental anguish to plaintiff.

26. Defendant Blake, over the course of 6 to 8 months deliberately moved inmates in and out of plaintiff cell without a compatibility scheme, because plaintiff refused to voluntarily double cell and complained of random cell assignments, based solely on cell availability. **SEE: Exhibit D-1 thru D-4.**

27. As a direct and proximate result of the aforesaid acts of negligence, recklessness, and retaliatory practices, plaintiff was compelled to file numerous complaints to both the institution administration and Central Headquarters. Plaintiff was compelled to have family write letters on his behalf, expressing their concern for plaintiff's safety, and the mental anguish they were experiencing because of previous occasions when plaintiff had been assaulted during his confinement. Plaintiff is now being retaliated against and further threatened by Defendants Patrick, Britton and Blake.

28. Plaintiff avers, defendant Patrick, Britton, and Blake, only after plaintiff filed grievances and had family intervene on his behalf, was retaliated against and moved from his housing unit by defendants Blake, Britton and Patrick, where he was subject to continued random housing, without a penal-logical objective, other than plaintiff's request for single cell status.

SEE: Exhibit E-1 thru E-3; F-1 thru F-3 and G-1 thru G-2.

29. Plaintiff states, that he's been arbitrarily disenfranchised from single celling policies, and discriminated against by the defendants, Patrick, Britton, Blake and Bailey, because of his longevity of confinement, non-violent behavior, and his questioning his removal and disqualification from single cell policies.

SEE: Exhibit "H".

30. Plaintiff states, defendants' Patrick, Britton, Blake and Bailey, because of arbitrary suspension of D.O.C. policies they have created against plaintiff, unsanitary living environments, because he involuntarily double cells, and defendants have created undue stress by placing him in incompatible living environments that foster violence and physical attacks against plaintiff.

31. The reckless, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, consisted, Inter Alia, of the following:

- A. engaging in un-authorized practices forbidden by the Department of Correction, (D.O.C.) policies and directives.
- B. failing to adhere to safety and sanitary protocols, as established by the D.O.C. policies and directive for double celling.
- C. operating a facility where their policies and practices promote violence against incompatible double celling inmates.
- D. failing to establish a mandated criteria for single celling of life sentence and long term prisoners', as directed by the D.O.C.
- E. failing to comply with policies and procedures required for individuals that involuntarily double cell, because it places lives in danger and promotes violent behavior.
- F. such other acts or omission as may be revealed in the course of discovery, or at trial of this case. **SEE: Exhibit D-1 thru D-4.**

32. Plaintiff states, defendants, Patrick, Britton and Blake choose to maintain hazardous overcrowded condition, for the expressed purpose of randomly celling inmates together based on cell space only, and to avoid implementing D.O.C.'s philosophical opposition to double celling, by deliberately avoiding the creation of a non-Z-Code single cell policy, and thus, purposefully placing plaintiff's life in danger of serious bodily harm, and forcing him under threats and retaliation to remain in an

involuntary double celling, on permanent basis, because he grievances he filed, and had his family intervene on his behalf.

SEE: Exhibit E-1 thru G-2.

33. Plaintiff states, the defendants, Patrick, Britton and Blake, have compelled plaintiff to consistently be confined in double occupancy without the benefit of screening, interview, or evaluation for appropriate housing, under criteria(s) for single celling, because he objects to double celling. **SEE:**

Exhibit "J".

34. Plaintiff states the the defendants, Patrick, Britton, Blake, and Bailey, failed to review plaintiff vulnerability to being a victim of assaults and attacks by other prisoners, and deliberately subject him to harm, where incompatible housing schemes are triggers for violence and attacks.

35. Plaintiff avers, that the defendants, Patrick, Britton and Blake, arbitrarily provides single celling to inmates without Z-Codes, through an arbitrary suspension of non-Z-Code single celling criteria, that would include plaintiff. Plaintiff has been retaliated against and excluded from single celling because he filed grievances against his in-voluntary double and random celling. **SEE: Exhibit "J".**

35. Plaintiff avers, that all the actions and policies aforementioned employed by the defendants, Patrick, Blake, Britton, and Bailey, violates Statutes **18 Pa. C.A.S. §2795 Reckless Endangering another person, by capriciously suspending protective safety compatibility schemes**, and randomly celling individuals, which promotes violence against plaintiff.

36. Plaintiff avers, that the suspension of D.O.C. policies on compatibility schemes by Patrick, Britton, and Blake, has allowed **18 Pa. C.A.S. §2703 and §2704 Assault by a Prisoner, and Assault by a Life Sentenced Prisoner** to be disproportionately, arbitrarily and vindictively applied against him thru their policy of randomly double celling, because he's refused to voluntarily double cell without proper screening and evaluation procedures that are required under D.O.C. policies, which defedants have ignored and suspended, acting in a retaliatory manner against plaintiff. **SEE: Exhiit "I"**

37. Plaintiff avers, that because defendants, Patrick, Britton

and Blake, chooses to maintain dangerously over-crowded conditions, and have suspended double celling safety schemes, they've created for plaintiff, because of his refusal to voluntarily double cell, hostile and agitated environments are manifested by celling arbitrarily and randomly assigning individuals to cells, which fails to meet the requirements for safety as established by the D.O.C.

38. Plaintiff states, the defendants, Patrick, Britton, and Blake, discriminated against him, insofar as, they've allowed single housing of individuals without Z-Codes, and with significant less time of total confinement than plaintiff's thirty seven years (37), and in retaliation because he grieved his double celling, defendants have voided his grandfather status forbidding the losing of things and privileges previously allowed by the D.O.C., including single cell living status.

SEE: Exhibis B-1 thru I.

39. Due to the defedants' actions, they've violated the aforementioned statues' acting under color of law, and they've caused plaintiff to be subject to bodily harm. They've discriminated against him, and on more than one occassion, have employed arbitrary practices, that caused him to suffer continued mental and emotional anguish. The defendnts' have overly punished plaintiff through disenfranchising him because of the significant amount of time he's spent in and under total confinement, by allowing newly established procedures to be applied retroactively, and inva^lidating^{ating} accomplishments made. Defendants have taken away previously established rules and policies held by plaintiff, without a penal-logical objective.

WHEREFORE, Plaintiff, John Frederick Nole, demands Judgment against the Defendants' George, W. Patrick, Rendell Britton, Frazer Blake, and John Bailey, in the amount in excess of Five Thousand Dollars, (\$5,000.00), and any other such negotiated terms deemed appropriate for settlement of damages done to plaintiff by the defendants' in this instant matter.

DATE: July 27, 2007

John Frederick Nole
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

EXHIBITS
A THRU J

Exhibit "A" - 7

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) Mr. Blake; unit Manager		2. Date: December 12, 2006	
3. By: (Print Inmate Name and Number) John Frederick Nole, AF-0346 <i>John F. Nole</i> Inmate Signature		4. Counselor's Name Mr. Bailey	
6. Work Assignment ADD Peer Educator		5. Unit Manager's Name Mr. Blake	
		7. Housing Assignment FB #43	
8. Subject: State your request completely but briefly. Give details. Mr. Blake: I would like to speak with you about re-visiting my request for my Z-Code, at your convenience.			
Sincerely, <i>J. F. Nole</i> John F. Nole			
9. Response: (This Section for Staff Response Only) MR NOLE, I spoke with MR Bailey and Deputy Britton and you do not qualify for single cell status. OP. JOHN BAILEY Deputy Britton			
To DC-14 CAR only <input type="checkbox"/>		To DC-14 CAR and DC-15 IRS <input type="checkbox"/>	

Staff Member Name

BLAKE
Print

[Signature]
Sign

Date

12/12/06

DATE:
SUBJECT:
TO:

12/13/06
Grievance Rejection Form

John Dole AFD346

Mo. Chenchavich

FB-43

FROM:

Facility Grievance Coordinator

FOR OFFICIAL USE ONLY

172403
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. X _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each 15 working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously **in grievance no.** _____ **dated** _____.

*You have provided nothing to substantiate
the need for Z code status.*

DC-804
Part 1

A - 2

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PA 17001-0598**

FOR OFFICIAL USE ONLY

172403
GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Ms. Doretta Chencherick	FACILITY: SCI-HOUTZDALE	DATE: 12-12-06
FROM: (INMATE NAME & NUMBER) John F. Nole, AF-0346	SIGNATURE of INMATE: <i>John F. Nole</i>	
WORK ASSIGNMENT: ADD Peer Education	HOUSING ASSIGNMENT: FB 43	RECEIVED SUPT'S ASST OFF

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner
3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.

DEC 13 2006

**SCI - HOUTZDALE
PO BOX 1000 HOUTZDALE, PA**

- A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804 Part 1 form and one, one-sided 8 1/2" x 11" page).**

I've requested to be formally evaluated for Z-Code celling through my unit Manager. This request was arbitrarily, stating in writing I did not qualify for the evaluation, and/or single celling. Without being provided a proper evaluation by those who are better able to address my psychological and emotional concerns, for both my safety and overall welling being. I believe the denial of my request to be evaluated for single living is a deliberate indifference, to my life being putting in jeopardy, under present circumstances. I have spoken with my counselor, and was advised to speak with my Unit Manager - I wrote him and was denied both an the opportunity to speak with him, and to be recommended to speak with a mental health and/or clinical personnel..

- B. List actions taken and staff you have contacted, before submitting this grievance.**

Spoke to my counsel and wrote to my Unit Manager to try and resolve this issue.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

A-3

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172403
12/13/06 S Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0346

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluated was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, emotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CC: File (3)

Exhibit "B"

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172409
12/13/06 S Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0348

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluate was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, emotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CO: File (3)

DATE:
SUBJECT:
TO:

12/27/06
Grievance Rejection Form

John Nole AF0346

Mo. Chenchavich
Facility Grievance Coordinator

FB-43

FOR OFFICIAL USE ONLY

173747
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each **15** working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. X _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously in **grievance no.** 71070 **dated** 12/24/03.

*Your last sentence sums up
your real reason for wanting
2 code status*

DC-804
Part 1

C-2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Ms. Doretta Chencherick	FACILITY: SCI-Houtzdale	DATE: 12-26-06
FROM: (INMATE NAME & NUMBER) John Frederick Nole, AF-0346	SIGNATURE of INMATE: <i>John F. Nole</i>	RECEIVED SUPT'S ASST OFF
WORK ASSIGNMENT: ACD Peer Educator	HOUSING ASSIGNMENT:	FB #43
INSTRUCTIONS: 1. Refer to the DC-ADM 804 for procedures on the inmate grievance system. 2. State your grievance in Block A in a brief and understandable manner 3. List in Block B any actions you may have taken to resolve this matter. Be sure to include members you have contacted.		DEC 27 2006
A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804, Part 1 form and one, one-sided 8 1/2" x 11" page). On December 26, 2006, I was informed by my Counsel Mr. John Bailey, my request to be formally evaluated for a Z-Code single cell status was denied, based on the alleged imposition that I attempted in 2003 to manipulate a Z-Code, through forged documents, and that I did not fit the criteria for Z-Code. It was also told to me that, single celling through the A-Code procedures were not applicable at this prison, as more rational for the denial. I am grievancing this procedure on the basis, I was denied a copy of the written decision of those individuals who participated in this decision making. I was denied the opportunity to speak with a clinical person, and/or psychologist, concerning my request, and have documented the emotional and psychological anxieties I experience with regards to this request. I have been arbitrarily denied documentation, demonstrating or showing, what circumstances were used to denied request and evaluations for a Z-Code, and under present date policies. (See Reversed Side Pg. 2)		SCI - HOUTZDALE P.O. BOX 1000 HOUTZDALE, PA
B. List actions taken and staff you have contacted, before submitting this grievance. I spoke with my counsel regarding this situation, and was informed there was not appeal procedures, and that I was not allowed a copy of the decision making.		

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

C-3

December 29, 2006

SUBJECT: Grievance Appeal
173747 12/27/06

TO : George Patrick, Supt.

FROM : *John F. Nole*
John Frederick Nole, AF-0346
FB #43

Supt. Patrick:

On two occasions now, grievances I've submitted have been foiled, to circumvent my being able to appeal these issues through the complete process.

No. 172403 was denied processing, and then, I received an informal interview from my counselor, who submitted a vote sheet, without recording any of my concerns and issues for compliance with policies for Z-Codes and/or single celling consideration.

The denial of processing my grievance, and then attempting to comply with the grievance issues, I originally made, shows a deliberate impedence to the process of having my issues addressed and have an opinion recorded for any further action that might need to take place.

I submitted a second grievance following the results of the submitted vote sheet. This grievance addressed a denial of the material documentation of the vote, and a question of what issues were looked at, and the rationale used to denied me. Without a statement of those issues and concerns addressed in the denial, the conclusion was arbitrary, bias and prejudicial.

This grievance No. 173747 was also denied processing on 12/27/06. I am personally concerned about the prejudice that is being developed against me because I am pursuing an avenue that is open to all inmates and I believe is being denied me arbitrarily, when I know I fit the criteria under multiple circumstances.

If the rationales used, and reported by Mr. Bailey, who stated I attempt^{ed} to forge documents using a High Ranking Official signature. The mental and emotional state of that individual may suggest, they will go to any extreme to show how desperate they are? These are just some of accusation and prejudices, being placed upon and conveniently used at the prison's whim, to denied implementation of policy.

I'm requesting to be able to send both my grievances back through for official processing and appeal rights that are allowed from unfavorable decision.

Thank you,

CC: File


C-4

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Houtzdale
Office of the Superintendent
January 4, 2007

SUBJECT: Appeal of Rejected Grievance #173747

TO: John Nole, AF0346
FB-43

FROM: George N. Patrick
Superintendent

George N. Patrick 

I have reviewed this appeal, the initial grievance, and the response provided by Ms. Chencharick, Facility Grievance Coordinator.

I find the rejection of the appellant's initial grievance by the Facility Grievance Coordinator to be appropriate, and I concur with it. Specifically, the issue grieved was reviewed and given a response previously via grievance #71070 dated 12/24/03. The decision to deny the appellant's request for a single cell was not "arbitrary, bias and prejudicial." Rather, there is no compelling reason to consider such a housing assignment at this time.

Uphold Initial Response.

GNP:mlb

c: Ms. Chencharick
DC-15
file

C - 5

January 8, 2007

SUBJECT: DENIAL OF GRIEVANCE PROCESSING AND APPEALS
Nos. 172403 and 173747

TO : Ms. Sharon M. Burke,
Chief Grievance Office

FROM : John Frederick Nole, AF-0346
SCI-Houtzdale

Ms. Burke:

Two separate grievances were submitted for processing at SCI-Houtzdale and were arbitrarily denied processing. The nature of these grievances were well within the prescribed area of issues to be addressed through the grievance process. In accordance with the DC-ADM-804, legitimate denial of issues grieved, can be appealed to those in authority that have the authority to resolve disputes. My grievances were not allowed to be processed in a regular manner, as prescribed by regulations, and the denials were arbitrary.

I made a formal request of my unit Manager to be evaluated for a Z-Code. The evaluation was denied. I made a grievance of the denial, it was denied processing. I appealed to Supt. Patrick, and was subsequently given a interview. There was not recording of my concerns, during this interview. Clearly, the interview was done so that the grievance process could be circumvented, and deny the appeal avenues of pursuit. See: Grievance Rejection Form #172403.

Upon receiving the decision that I was denied my request for Z-Code status, and being denied a copy of the rational for the decision, I filed a grievance, and stated the procedures that I used.. This was also returned unprocessed. I filed an appeal, requesting that both my submitted un-processed grievances, be allowed to be resubmitted for proper processing. I was denied. SEE: No. 173747..

The rational for not processing my complaint, was bias, insofar as, the information recently supplied by my present Classification, was not a part of any previous filing under #71070, as stated, by the Grievance Coordinator.

I originally entered the Bureau of Correction under a single cell classification in 1971; and was Grandfathered into single cell status, which has been applicable every where I've been except here at Houtzdale. Here I have been denied single cell housing. The Z-code was established in approximately 1985, and was not designed to punish those individuals that had already been confined in the system under life sentences particularly, and single cell housing.. SCI-Houtzdale, has never established a single cell policy outside of an Z-Code process, ever! and is used Z-Coding to disenfranchise those who have spent 35 years or more in corrections.

The emotional and psychological affect of having to adapt. The stress

and anxiety created by the lack of compatibility scheme. The placing of me in situations where my time of confinement is being used to punish me under double celling, has created circumstances where I am vulnerable, to assault, and has created circumstances where Pa. Laws can be disproportionately applied in assaulting situation.

I believe, D.O.C. policies, permit convicts to have copies of documents relative to decision made on their behalf, if for no other reason than to address factual issue raised and used in the appeal of decision made on their behalf. I was denied the rational that was used for not granting me single cell status.

I'm requesting that the previous submitted grievances be process and addressed in a proper manner consistent with the grievance policies, and I be given copies of the documents generated to deny my request.

CC: File (3)

C-7

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
Secretary's Office of Inmate Grievance's and Appeals
(717) 975-4954
January 17, 2007

SUBJECT: Grievance Correspondence-Grievance No. 173747

TO: John Nole, AF-0346
SCI Houtzdale

FROM: Secretary's Office of Inmate Grievances & Appeals *bw*

This is to acknowledge receipt of your letter to this office. Upon review of your letter, it is the decision of this office to file your letter without action. You have failed to comply with the provision(s) of the revised DC-ADM 804 effective January 3, 2005.

In accordance with the provisions of the DC-ADM 804, VI D, 1g, a proper appeal to final review must include photocopies of the Initial Grievance, Initial Review, the Appeal to the Facility Manager, and the Facility Manager's decision. The text of your appeal(s) to this office shall be legible, presented in a courteous manner, and the statement of facts shall not exceed two pages.

Review of the record reveals that your appeal(s) is incomplete. You have failed to provide this office with the required documentation that relates to your appeal(s). You are not permitted to appeal to this office until you have complied with all procedures established in DC-ADM 804. **You have ten working days from the date of this memo to provide this office with documents needed to conduct final review. Any further correspondence from you regarding your appeal(s), which does not contain the required documents, will result in a dismissal of your appeal(s).**

/bw

cc: Superintendent Patrick
DC-15

Grievance Office
Central File

.....
"Our mission is to protect the public by confining persons committed to our custody in safe secure facilities, and to provide opportunities to inmates to acquire the skills and values necessary to become productive law-abiding citizens; while respecting the rights of crime victims."

ADMINISTRATIVE MEMORANDUM

Administrative Manual
Volume VI
OM-082.07

SUBJECT: Inmate Housing - Double-Celling

TO: Superintendents

FROM: *Glen R. Jeffes*
Glen R. Jeffes
Commissioner

I. PURPOSE AND SCOPE:

This Administrative Memorandum establishes policy and procedures for double-celling in the Department of Corrections. It applies to all state correctional institutions and regional correctional facilities.

II. GENERAL POLICY:

The administration of the Department of Corrections is philosophically opposed to double-celling, confining two inmates in a cell originally designed for one. The practice was implemented in response to continued overcrowding and shall remain in place only until it is possible, consistent with good correctional practices, to provide sufficient appropriate cell space to afford each inmate a single occupancy cell. It may not be used as punishment.

III. SELECTION OF CELLS:

Selection of cells to be used for double occupancy should be made pursuant to the following guidelines.

- ✓ * — A. Cells in administrative or disciplinary custody may be used for double occupancy only after careful review of those inmates to be double celled for temporary periods, but not to exceed 30 days. Inmates to be continued in this status beyond 30 days require written approval of this office. Inmates in this status shall be exercised daily and showered a minimum of three times per week.
- B. Every attempt should be made to designate cells in the selected locations that afford the most appropriate access, supervision, and control.
- C. The larger cells should be used first.
- D. Cells which present the fewest difficulties in providing adequate security and sanitation should be used first.

IV. DURATION OF DOUBLE-CELLING:

Individual inmates required to live in double occupancy cells on an involuntary basis should be moved to single housing when appropriate single occupancy cells become available.

V. SELECTION OF INMATES TO BE DOUBLE-CELLED:

The selection of inmates to be double celled involves a review of numerous factors. Selected factors are mentioned below as suggestions. The lists, however, are not exhaustive, and other factors deemed appropriate by the institution may also be weighed.

A. ~~The following inmates should not be double-celled:~~

1. ~~Inmates of opposite sexes.~~
2. ~~Same sex inmates with known or suspected homosexual tendencies.~~
3. ~~Inmates who are emotionally or mentally disturbed.~~
4. ~~Inmates in Diagnostic Centers should not be double-celled without extreme caution. The inmates who have been classified and are awaiting transfer to another institution should be considered before those who are unclassified. The practice of double-celling in the Diagnostic Centers or Assessment Units is an exception to the policy stated in OM-102, Chapter VII, subsection 01, B. hereby authorized to accomplish necessary double-celling.~~
- *-5. ~~Inmates in administrative and disciplinary custody should not be double-celled without a thorough review and careful consideration by an appropriate staff body.~~

B. Voluntary:

1. ~~Inmates who agree to share a cell should be the first considered for double-celling.~~
2. ~~Requests to share a cell should be carefully evaluated to ensure that it is appropriate for the requesting inmates to be housed together. Voluntary double-celling may be continued indefinitely as long as double-celling is necessary. This shall not be construed as a right of inmates to be double-celled.~~

C. Involuntary:

1. The institution should attempt to double-cell inmates who will be compatible with each other. In determining compatibility, some factors to be considered include:
 - a. Familial relationship, e.g., brothers, cousins
 - b. Age
 - c. Race and ethnic biases of the inmates to be housed together
 - d. Interests
 - e. Geographic identity
 - f. Length of sentence
 - g. Program assignment (job, education, etc.)
 - h. Program level
 - i. Security needs (escape, substance abuse, violence, deviate sexual acts, etc.)

- j. Behavioral disposition and attitude
- k. Group identification (gangs, etc.)
- l. Sophistication (prior incarceration, etc.)
- m. Other factors deemed appropriate by the institution

2. Involuntary double-celling of appropriate inmates may be continued as long as necessary. No inmate may refuse to double-cell.

VL PROCEDURE:

A. Identification of inmates for possible double-celling:

- 1. Inmates may request consideration.
- 2. Staff may suggest inmates for consideration.

B. Interviews: Each inmate considered for double-celling should be interviewed separately by staff to determine willingness and to identify any possible problems or pressures being applied to inmate.

C. Staff approval: All criteria should be considered and appropriate staff shall approve or disapprove double-celling for each case.

✓ *-D. Orientation: Each inmate involved in double-celling will be informed of the conditions which apply. In this orientation, staff will include rules governing behavior as well as those governing the conditions and contents of the cell. Also included will be the procedures for requesting consideration for termination of double-celling.

✓ *-E. Monitoring: Inmates doubling up should be properly supervised and interviewed regularly to ensure problems are quickly identified and corrected.

VII. DORMITORIES:

Dormitories established to accommodate special programs, such as the forestry camps, are not considered part of the General Policy or Procedures of the administrative memorandum. ~~Dormitories established and used only for the purpose of accommodating the overcrowding shall be governed by the provisions of this administrative memorandum and should continue only until it is possible consistent with good correctional practices to provide sufficient appropriate cell space to afford each inmate a single occupancy cell.~~

VIII. INSTITUTIONAL AUTHORITY:

Each institution shall have the authority to develop local implementation procedures consistent with this administrative memorandum. Any exception to the policies and procedures herein contained must be approved in writing by my office.

IX. PERIODIC REVIEW:

This administrative memorandum shall be reviewed periodically (no less than annually) to ensure that it is meeting the objective.

X. EFFECTIVE DATE:

This Administrative Memorandum shall be effective immediately and supersedes the November 10, 1983 memorandum entitled, "Inmate Housing - Double-Celling" and all other previous communique on this subject.

GRJ:jb

cc:
Deputy DeRamus
T. Otto
Regional Directors
Department Directors
D. Gearhart
F. Gillis
K. Robinson

Ex E-1

Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

December 20, 2006

Mr. Jeffrey Beard, Secretary
Department of Correction
P.O. Box 598
Camp Hill, Pa. 17001-0598

Dear Mr. Beard:

I am writing this letter on behalf of my brother John Frederick Nole, who is housed at your prison in Houtzdale. My brother Freddie, is a lifer and has been in prison now for over 37 years.

My Brother, was recently approached by his Unit Manager in October of this year, and asked if he wanted to be transferred closer to home. He said yes. He did not know at the time our mother had been hospitalized several time, and has recently been advise, she cannot endure long trips. But he did not request a promotional transfer on his own, it was however, offered to him. My brother's transfer was denied because his classification is an escape risk and security threat, and he will not be considered for at least five years. He's been at his present location for over 3 years now. But has been in the middle and western part of the state over 17 years.

My brother recently informed me he tried to get a Z-Code housing assignment based on this classification, and your recent issuing of a new Long Term Confinement and Administrative Custody Placement Directive which places my brother in jeopardy, due to this Escape/Security Risk History.

The transfers that have been attributed to my brother over the last 17 years that he's been between Huntingdon and now Houtzdale, was attributed to him being an escape risk and a security threat. I don't believe my brother is either, but your prisons have created this history for him, and I don't believe that my brother should be place in situations where he can succumb to circumstances that will further jeopardize his liberty, and possibly curtail program and family interaction, because of someone else misbehavior.

This escape risk classification is been established to deny my brother the opportunity to get closer to our families, but does not have the substance to provide him living circumstances so his life and livelihood is not put in danger.

As far as I know, my brother has been allowed single living situation based on his time of confinement every where he's been, and until recently had been given consideration at Houtzdale, but is now being deny the opportunity to even be evaluated by Houtzdale Staff, for single housing, based on this new information.

If my brother is an Escape Risk and Security Threat, as he's been classified, there is no reason for him not to have a single celling situation, to reduce this attributed history from continuing.

E-2

2

. Mr. Beard, my brother has tried to resolve this with the Houtzdale Administration, to no avail, and has sought out our family for assistance, and we will do whatever we must to assure our brother is not hurt, and has the opportunity to not be unduly hurt and/or injured by prison stigmas.

I thank you for your assistance in reviewing this matter, and look forward to any response you feel appropriate.

Sincerely,

Loretta Nole

CC: Brother
File

E-3



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

January 8, 2007

Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150


RE: J. Nole, AF0346

Dear Ms. Nole:

Your letter dated December 20, 2006 regarding your brother's request to have a Z code place on his file has been received by my office for response. Please understand that program codes, specifically Z codes, are assigned by the institutional staff, not Central Office. There are specific criteria outlined for inmate's requesting Z codes and the institution is in the best position to determine whether Mr. Nole meets the specific criterion. I would suggest that he discuss this matter with his counselor and Unit Management Team at SCI-Houtzdale.

Thank you for your interest and support of Mr. Nole. I trust that this addresses your concerns.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/sp

cc: Deputy Secretary Moore
Superintendent Patrick
Corr. #: 2006-C17-000000168
Central File
File

Ex. 'F' - 7

930 Mill Grove Drive
Norristown, Pa. 19403
April 4, 2007

Jeffrey Beard, PhD
Secretary
Department of Corrections
PO Box 598
Camp Hill, Pa. 17001-0598

Dear Secretary Beard,

My sister-in-law, Loretta Nole, wrote to you previously about her brother and my husband, John F. Nole AF0346, who is a prisoner at SCI-Houtzdale, and his cell situation. Your response was that he should deal with the staff at SCI-Houtzdale regarding evaluation for a Z-code.

My husband has attempted to be evaluated for the Z-code, but he feels that he has not been properly evaluated for a single cell status. He feels that his requests to staff to be properly evaluated have resulted in him being transferred to another block, to another double cell situation. Several weeks ago, I attempted to speak with Superintendent Patrick about his cell situation and the transfer and was told that I would have to speak with Major Close. I left my phone number with his secretary, but have yet to receive a return call. This is not the first time that staff there has not responded to a communication that I have addressed to them.

I have also enclosed some correspondence from staff to my husband regarding his cell situation. How should we receive the comments made? "Perhaps you will have better luck at another facility?"

My family and I are concerned about our loved one and hope that this letter will not result in any retaliatory treatment of either him or us.

My husband has been in prison since 1969, when he was seventeen years old, is serving a life sentence and is currently almost fifty-five and one-half years of age. He has made the most of his time in prison, being active in many organizations and programs, often in a leadership role, going to school and working. We have been married for almost 23 years; we have known each other for 25 years.

When I first knew my husband, every prisoner was single celled. I was aware that when double cells began in the 1980's, that lifers who were in the system at the time were told that they would continue in the single-cell status. When did this stop? My husband is not accustomed to having to live with someone in such a confined space, after all of these years. Until recently, my husband always lived by himself in many prisons, but recently it has become revolving door cellmate, since his transfer to SCI-Houtzdale. Why has this changed?

" K-2 "

Why has my husband's request to be properly evaluated for a Z-code been denied? It is my understanding that there are also A-codes for people in my husband's situation. Why is he not eligible for that with his age, time and sentence? What are other programs for single cells, besides Z-codes, because I believe that there are prisoners with less time in than my husband with single cells who do not have Z-codes at the prison? What is the program that allows people with less time in than my husband to live in a single-cell situation without having a Z-code? When will my husband be able to live alone again?

This is not the first time that procedures available have not been afforded to my husband at this prison. My husband suffers from high-blood pressure, which is treated, but adequate water and time was not provided to him for a random drug test and he was not allowed to give hair, which he asked to do many times. Why was this not allowed? It seems that DOC policy allows for hair to be a way to do the random drug test. My husband tried to provide a sample, but was unable to with the amount of water and time provided. Urinating is not a voluntary bodily function. The bladder needs to be sufficiently full for one to be able to urinate; this requires an adequate amount of fluid and time, which should be provided and was not provided. Why are prisoners not given enough to drink and enough time? The blood pressure medicine that my husband is administered affects the fluid levels in his body. My husband has no history of substance abuse. I am a hard-working, tax-paying, college-educated professional and a law-abiding citizen. I am all for keeping our prisons drug-free. I also expect prisoners, including my husband, to have every opportunity available to them to be able to prove that they are not abusing any substance. Since the system treats those who are not be given enough to drink or time the same as people who have positive test results, procedures need to be followed to make certain that those who are attempting to provide a sample have enough time and fluids to do so, or let them provide a hair sample, if they are having difficulty.

Thank you for your personal reply addressing my concerns and questions regarding my husband.

Sincerely,

Susan Beard-Nole

Cc: Rep. Carole Rubley



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

Ex. F-3

OFFICE OF THE
SECRETARY OF CORRECTIONS

April 16, 2007

Susan Beard-Nole
930 Mill Grove Drive
Norristown, PA 19403

Re: John Nole, AF-0346

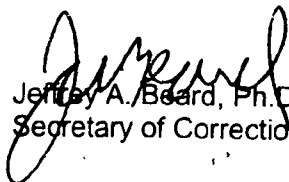
Dear Ms. Waite,

I am in receipt of your letter concerning obtaining a single cell and the random drug testing for your husband John Nole, AF-0346, who is incarcerated at SCI Houtzdale.

Your husband has been evaluated for single cell status. It has been determined that he does not meet Department of Corrections criteria for a single cell. The recent dramatic increase in the population has resulted in all available cell space being utilized. Your husband may have been in a single cell previously, but he has never had single cell status. Therefore, he is appropriately placed in a double cell. Your husband was provided with the allotted time and fluid to provide a sample for a random drug test, which has been proven to be adequate by national testing data. The request for a hair sample test is only provided to refute a positive test, not for failure to provide a sample.

I assure you our Department is committed to ensuring that each institution is operated in a manner that complies with all Department of Corrections policies and procedures.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/krh

cc: Superintendent George Patrick
Keri Moore #2007-C17-000000069
Central File
File

" G-1 "

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

March 21, 2007

Mr. George Patrick Superintendent
Houtzdale Prison - P.O. Box 1000
Houtzdale, Pa. 16698-1000

Dear Mr. Patrick:

I'm writing on behalf of my brother John F. Nole.

I wrote Secretary Beard a while back concerning my brother's living circumstances at your prison. I was informed that the issue must be handled at the facility level by my brother. After a lengthy conversation with my brother, I've been assured he's addressed this issue with you and your staff, on a couple of occasions.

Mr. Patrick, I would like to know, if I may, why my brother, after never needing a Z-Code to maintain his single cell status throughout his almost 38 years in prison, now needs a Z-Code to acquire single housing, but has been refused by you and your staff, without a formal evaluation? I would also like to try and understand the rational of why my brother it appears, is punished and treated worst with the more time he puts in?

Freddie, has been at your facility now for shortly over three years, and from speaking with him, he seems to have done some positive things and gives his time and services; is negative behavior rewarded more than positive behavior?

Mr. Patrick, I'm requesting for my own peace of mind, why my brother, with all the time that he has in, cannot be given some type of consideration?

I do believe my brother when he tells me his mental and emotional well being is threaten, by having little or nothing in common with, as he put it, "THE NEW BREED OF PRISONER".

My brother has never had a problem maintaining single cell living at any of the other places, and that is been without a Z-Code. Is the number of years a person is in prison, not a factor for single cell living?

In closing Mr. Patrick, my family and I encourage my brother to do his best and work with those around him, has he not done this?

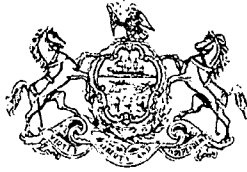
I plead with you to address this issue, it's an emotional stress on all of my family to think my brother is being placed in living situation where he can be hurt because he has a different way of living in your prison than most who come in and are there. I know my brother to be very responsible.

Very truly yours,

Loretta Nole

CC: File

Jeffrey A. Beard, Ph.D.
Secretary



George N. Patrick
Superintendent

Exhibit
G-2"

Pennsylvania Department of Corrections
State Correctional Institution at Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000

PHONE: (814) 378-1000 FAX: (814) 378-1030

April 4, 2007

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150

Re: John Nole, AF0346

Dear Ms. Nole:

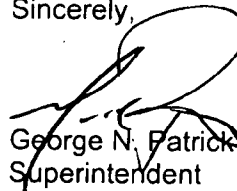
This is in response to your correspondence dated March 21, 2007, regarding your brother, John Nole AF0346.

The Z-code is a program code assigned to inmates for single celling purposes. In most instances, this is assigned to an inmate who poses a threat to others if double celled. Inmates serving long term sentences are not specifically granted a Z-code for this reason alone. Our intent is to carefully screen and limit unnecessary single-cell assignments due to the absence of available Departmental bed space.

The Pennsylvania Department of Corrections' inmate population is growing at a startling rate. The inmate population at SCI-Houtzdale is a reflection of this growth. Although the Department is exploring additional new housing initiatives and maximizing the use of community corrections bed space, there does not appear to be any imminent relief which would allow us the leisure to house your brother in a cell by himself. While I am sympathetic to your concerns, be assured that your brother does have some ability to choose his cellmate on the housing unit in order to minimize his contact with inmates he feels are less desirable.

I trust this addresses your concerns.

Sincerely,


George N. Patrick
Superintendent

GNP:CG

c: Major Close
Mr. C. Garman

DC-15
file

"Our mission is to protect the public by confining persons committed to our custody in safe, secure facilities, and to provide opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens; while respecting the rights of crime victims."

Ex "H"

John Frederick Nole, AF-0346

March 4, 2007

Mr. Frazier Blake,
F-Block Unit Manager

Dear Mr. Blake:

I've written you prior, asking for consideration for single cell house under both the Z-Code and A-Code, both of which have been denied. I am again requesting single cell living status. I believe strongly, while you have the authority to put me in a protective cell status, you've refused to do so lately, for any significant period of time. I believe, I have earned this consideration. I am a contributor to the betterment of the institution. I volunteer both my time and my services. I am among the top 1 to 5 people at Houtzdale with over 35 years in the D.O.C., and in over three year at the institution, I have maintain relatively good behavior.

While I differ in my belief from yours, that I do not qualify for a Z-Code, single living situation, since that is all that is offered at this prison, certainly my overall adjustment, program contribution, time of confinement and involvement, warrants some consideration for single cell protection, given to individuals on other housing units, and who contribute nothing towards the better of this institution.

While you may deem having me adjust and readjust to different cell-mates on weekly basis, and I'm not down-playing your generosity, that is more mental and emotionally stressful.

I've never had a Z-Code, because I've always been given a grandfather privilege of having been in corrections before codes were required. Surely you are aware, as Unit Manager, under what circumstances I live, is your call?

Thank you for the time you have given this communication.

Sincerely,

John F. Nole
John Frederick Nole

CC: File

*MR Nole,
you are not getting a Z-code.*

BLAKE
3/5/07

Exhibit
"T"

Form DC-135A INMATE'S REQUEST TO STAFF MEMBER	Commonwealth of Pennsylvania Department of Corrections INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.
1. To: (Name and Title of Officer) <u>Supt. Patrick</u>	2. Date: <u>March 7, 2007</u>
3. By: (Print Inmate Name and Number) <u>John F. Nole, AFO346</u> <u>John F. Nole</u> Inmate Signature	4. Counselor's Name <u>Unknown</u> 5. Unit Manager's Name <u>Unknown</u>
6. Work Assignment <u>AD Peer Educator</u>	7. Housing Assignment <u>EA 4</u>
8. Subject: State your request completely but briefly. Give details. <u>Supt. Patrick:</u> <u>While I understand I don't have a right to live in any specific area of the inst. I should not be punished because I avail myself of procedures to inquire about various policies. Since I may very well die in prison how I live and under what circumstances is important to me. Since this inst. does not allow single cell living except by way of 2-Code, and when I requested valid information why I don't qualify, I'm deemed and labeled disruptive and transferred from the unit by Mr.</u> 9. Response: (This Section for Staff Response Only) <u>John -</u> <u>Any "contributions" you might</u> <u>make are overshadowed by your</u> <u>neediness. Due to the overpopulation,</u> <u>I do not have the luxury of having</u> <u>our single cells. You don't qualify</u> <u>for a 2 code perhaps you will</u> <u>have better luck in another</u> <u>facility</u>	
To DC-14 CAR only <input type="checkbox"/>	To DC-14 CAR and DC-15 IRS <input type="checkbox"/>

Staff Member Name

Sign

Date

Revised July 2000

3/7/07
MASSORS
cc: Mr. BUCK

Blake via Deputy Britton's Instructions?
BECAUSE I'M ASKING legitimate questions?
I Really Am Concerned About my Safety
And well being if Just one Staff
member Can deem me A Threat
to the normal orderly Running of the
Inst. And transferred me on A whim.
This transfer come one day
after I asked Mr. Blake to
TAKE INTO CONSIDERATION my
time in and allow me protective
cell time, A policy That is Rendered
to Those who ARE Contributors.
How Should I view This treatment
Sir?

John F. Rolle

Ex 5

Classification System Custody Levels	
Custody Level	Type of Supervision
1	Community Corrections (Pre-Release)
2*	Minimum
3	Medium
4	Close
5	Maximum

*Custody Level 2 inmates are not permitted outside of the institutional perimeter without additional approval and assignment of Program Codes.

Program Code	Custody Level	Definition
A	2, 3	House in Single Cell (Long Term Offender) Note: This is based upon favorable adjustment and space availability.
C	1, 2	Community with Supervision
D	5	Death Penalty
E	1	Educational/Vocational
F	1	Furlough
G	1	Community Corrections Center
H	3, 4, 5	High Risk
M**	2	Minimum Supervision
N	N/A	New Commitment
O	1, 2, 3, 4, 5	Observation
P	2, 3, 4, 5	Parole Violator Pending
R**	2	Regular Supervision
S	5	Solitary Confinement
T	5	Temporary RHU
W	1	Work Release
X**	2	Armed Supervision
Y	2, 3, 4, 5	Natural Life Sentence
Z	1, 2, 3, 4, 5	House in Single Cell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 28 2007

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION

No. 2007-00701-CD

William A. Brown
Prothonotary/
Clerk of Courts

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 552(b)

Plaintiff/appellant, John Frederick Nole, hereby request
leave to appeal this matter to the Commonwealth/Superior of
Pennsylvania in forma pauperis and in support thereof, states the
following:

1. On August 8, 2007, this court entered an order sustaining
the Preliminary objections of Respondents-appellees, Department
of Corrections, and dismissing the complaint of plaintiff.
2. On August 16, 2007, plaintiff-appellant filed a Notice of
Appeal to the Commonwealth of Pennsylvania.
3. Plaintiff-appellant, John Frederick Nole, is indigent, and
has not means of paying the cost for further pursuit of his legal
claims.

WHEREFORE, Plaintiff-appellant, John Frederick Nole, request
this Court to enter an order pursuant to Pa. R.A.P. 552(b) grant-
ing his application for leave to appeal in forma pauperis.

Respectfully submitted

John F. Nole
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

DATE: August 27, 2007

The first of these is the fact that the
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the seventeenth is the fact that the
the eighteenth is the fact that the

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

JOHN FREDERICK NOLE,
Petitioner
vs.

GEROGE W PATRICK, et al
Defendants

:
:
: CIVIL ACTION
:
: No. 2007-00701-CD
:
:

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 552(b)

IN FORMA PAUPERIS VERIFIED STATEMENT

I John Frederick Nole, state under the penalties provided by 18 Pa. C.S. § 4908 (unsworn falsification to authorities) that:

1. I am the plaintiff in the above action and because of my financial condition am unable to pay the following fees and costs: Appellate filing fees, costs of reproducing records or briefs, and irreparable harm would result if not waived.

2. My response to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.

(a) Are you employed? Yes: Prison inmate employment

(b) Have you received within the past twelve months any income from a business, profession, or other forms of self employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source? No.

Do you own any cash, checking or savings account? No.

Do you own any real estate, stocks bonds, notes, automobiles, or other valuable property? No.

There are no person(s) who are dependent upon me for support.

I don't have any debt that I am aware of this time.

3. I understand that a false statement or answer to any questions in this verified statement will subject me to the penalties provided by law.

Aug. 27, 2007

Respectfully submitted,
John F. Nole
John Frederick Nole. AF-0346

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

I hereby certify this to be a true
and tested copy of the original
statement filed in this case.

AUG 28 2007

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION
Attest

No. 2007-00701-CD

[Signature]
Prothonotary/
Clerk of Courts

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 552(b)

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WHEREFORE, Plaintiff-appellant, John Frederick Nole, request
this Court to enter an order pursuant to Pa. R.A.P. 552(b) grant-
ing his application for leave to appeal in forma pauperis.

Respectfully submitted

[Signature]
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

DATE: August 27, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION

No. 2007-00701-CD

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 352(b)

IN FORMA PAUPERIS VERIFIED STATEMENT

I John Frederick Nole, state under the penalties provided by 18 Pa. C.S. § 4908 (unsworn falsification to authorities) that:

1. I am the plaintiff in the above action and because of my financial condition am unable to pay the following fees and costs: Appellate filing fees, costs of reproducing records or briefs, and irreparable harm would result if not waived.

2. My response to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.

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(b) Have you received within the past twelve months any income from a business, profession, or other forms of self employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source? No.

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Aug. 27, 2007

Respectfully submitted,

John F. Nole

John Frederick Nole, AF-0346

P.O. Box 1000

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner
vs.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 23 2007

CIVIL ACTION

GEROGE W PATRICK, et al
Defendants

No. 2007-00701-CD

Attest.

William A. Houtzdale
Prothonotary/
Clerk of Courts

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
17 AUG 2007 08 29

APPLICATION TO PROCEED IN FORMA PAUPERIS

I, John Frederick Nole, declare that I am the plaintiff in the above entitled proceeding; that in support of my request to proceed without being required to pre-pay fee, cost or give security thereof, I state that because of my poverty, I am unable to pay the cost of said proceedings or give security. Therefore, I believe I am entitled to relief.

In further support of this application: I certify the following: I am employed: 1. (A) My wages are approximately \$60.00 per month through a prison compensation program. 2. In the past six months I have received small gifts from friends and family to support the necessities I require for physical maintenance on the average of \$30.00. 3. I have no checking accounts. I have approximately \$25.00 in my inmate prison account. 4. I do not have nor do I own any property, Stocks, Bonds, notes, automobiles or other valuable property. 5. There are no individuals who rely on me for support.

I declare under penalty of perjury, that the foregoing is true and correct.

DATE: August 16, 2007

Respectfully Submitted
John F. Nole
John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale Pa. 16698-1000

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner
vs.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

CIVIL ACTION

GEROGE W PATRICK, et al
Defendants

AUG 23 2007

No. 2007-00701-CB

Attest.

William H. [Signature]
Prothonotary/
Clerk of Courts

APPLICATION TO PROCEED IN FORMA PAUPERIS

I, John Frederick Nole, declare that I am the plaintiff in the above entitled proceeding; that in support of my request to proceed without being required to pre-pay fee, cost or give security thereof, I state that because of my poverty, I am unable to pay the cost of said proceedings or give security. Therefore, I believe I am entitled to relief.

In further support of this application: I certify the following: I am employed: 1. (A) My wages are approximately \$60.00 per month through a prison compensation program. 2. In the past six months I have received small gifts from friends and family to support the necessities I require for physical maintenance on the average of \$30.00. 3. I have no checking accounts. I have approximately \$25.00 in my inmate prison account. 4. I do not have nor do I own any property, Stocks, Bonds, notes, automobiles or other valuable property. 5. There are no individuals who rely on me for support.

I declare under penalty of perjury, that the foregoing is true and correct.

DATE: August 16, 2007

John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale Pa. 15698-1000

RECEIVED CLERK OF COURT
COMMONWEALTH OF PENNSYLVANIA
17 AUG 2007 88 29



COMMONWEALTH COURT OF PENNSYLVANIA

August 21, 2007

MICHAEL F. KRIMMEL
OFFICE OF THE PROTHONOTARY
624 IRVIS OFFICE BUILDING
HARRISBURG, PA 17120

TELEPHONE
(717) 255-1650

William A. Shaw, Prothonotary
Court of Common Pleas of Clearfield County
Courthouse
230 East Market Street
Clearfield, PA 16830

Re: John Frederick Nole v. George W. Patrick et al.
Trial Court No. 2007-00701-CD

Dear Mr. Shaw:

The enclosed notice of appeal was received by this court on August 17, 2007. It appears to be plaintiff's attempt to appeal from the August 8, 2007 order of the Court of Common Pleas of Clearfield County. In accordance with Pa. R.A.P. 905(a), we have stamped the notice of appeal with the date of receipt and are hereby transmitting it to you for processing. We note that no statement regarding a trial court transcript or copy of docket entries was included with the notice of appeal. We further note that included with the notice of appeal is an application to proceed in forma pauperis that should be referred to the trial court in accordance with Pa. R.A.P. 552.

We note that this would appear to be the second recent filing in this matter. By letter dated August 15, 2007, I sent you another notice of appeal for processing.

Thank you for your assistance in this regard. If you have any questions, please contact me.

Sincerely,

Michael F. Krimmel
Deputy Prothonotary/Chief Clerk

MFK/gb

Enclosure

cc: Valeria Streisfeld, Administrative Assistant II

RECEIVED 8-23-07
FROM COMM. COURT (E)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

NOTICE OF APPEAL

NOW COMES, Petitioner in this instant matter, giving Notice of Appeal in the above caption matter. Petitioner is seeking redress of the order of Judge Frederic Ammerman, denying The Complaint of Petitioner on August 8, 2007.

Attached hereto is the order of such denial.

Respectfully submitted,

J. F. Nole
John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE: August 16, 2007

RECEIVED BY CLERK
COMMONWEALTH COURT
OF PENNSYLVANIA
17 AUG 2007 08 29

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RANDALL BRITTON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

NO. 07-701-CD

OPINION

Plaintiff John Frederick Nole ("Nole") is an inmate confined at the State Correctional Institution ("SCI") at Houtzdale. He is serving a life sentence. Defendants are all employees of the PA. Department of Corrections ("DOC") who are assigned to SCI-Houtzdale.

Nole alleges that from March 31, 1971, until September 30, 2003, he was housed in cells without a cellmate. This is apparently referred to as single cell status. On or about December 12, 2006, Nole requested through Defendant Frazer Blake that he be evaluated for single cell status. Both Blake and Defendant Randall Britton informed Nole that he did not qualify for single cell status. Nole appealed this decision to Defendant George Patrick, the Superintendent of SCI-Houtzdale, who never responded in writing to his appeal. On December 26, 2006, Defendant John Bailey informed Nole that his request for Z-Code status had been denied because he did not fit the criteria. Bailey told Nole that his request was denied because Nole had tried to manipulate a Z-Code by placing forged documents in a counselor's file while he was confined at SCI-Greene. Z-Code is used to designate inmates who do not meet the criteria for double or multiple celling, and therefore require single celling due to medical needs, mental health

problems, victimization concerns, or assaultive facility behavior. Nole appealed this decision within the prison and the appeal was denied.

Nole filed a complaint with this Court on May 11, 2007 alleging that the Defendants recklessly, carelessly and negligently placed his life in danger and promoted violence, mental anguish, and a breakdown in safety for the express purpose of breeding volatile circumstances in direct violation of DOC policies for involuntary double celling. He further alleges he is in danger of being assaulted and is being retaliated against. He alleges that the Defendants' actions violate 18 Pa. C.S. §§ 2703, 22704 and 2705 and have discriminated against him by allowing individuals who have been incarcerated for less time than he has and who do not have Z-Code status to have single cells. The Defendants filed Preliminary Objections to the Complaint on July 2, 2007. Under Pa. R.C.P. 1028(c)(1) Nole had the right to file an amended complaint within 20 days after service of the Preliminary Objections. Nole was served with the Preliminary Objections by no later than July 3, 2007. This is the date on the Motion to Amend Complaint he caused to be filed on July 6, 2007 wherein he references the Preliminary Objections. As Nole had the right under Rule 1028 to file an Amended Complaint and no court permission was necessary, the Court did not issue a ruling on the Motion to Amend. In July 10, 2007 the Court issued a briefing schedule on the Defendants' Preliminary Objections. The Defendants' brief was received on August 2, 2007. Nole did not submit a brief. Instead, Nole filed an Amended Complaint on July 30, 2007, outside the required 20 day limit.¹ Therefore, the Court will rule on the Defendants' Preliminary Objections to the original Complaint.

¹ Nole received the Preliminary Objections no later than July 3, 2007. His Amended Complaint is dated July 27, 2007. Even assuming Nole had delivered his Amended Complaint to the prison mailbox on July 27, 2007 he still did not meet the 20 day deadline.

This Court has reviewed the statements of law and precedent set forth in the Defendants' Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein.

Finally, this Court does not believe it will serve any legitimate legal purpose to permit amendment of the Complaint by Nole. Nor is this Court aware of any "seniority" policy or rule which entitles a longer serving inmate to a single cell as opposed to an inmate with a shorter sentence.

ORDER

NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.

BY THE COURT,

/S/ Fredric J Ammerman

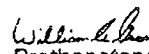
FREDRIC J. AMMERMAN

President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 09 2007

Attest.


Prothonotary/
Clerk of Courts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

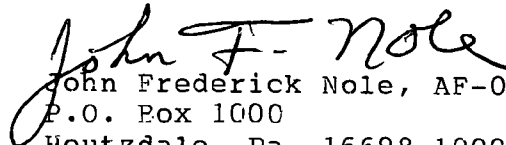
PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing documents, **NOTICE OF APPEAL** from the Denial of Petitioner's Complaint was served upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514(c).

Certified Mail; Postage Pre-Paid; Return Receipt Requested;
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk of Court
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 16, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

NOTICE OF APPEAL

NOW COMES, Petitioner in this instant matter, giving Notice of Appeal in the above caption matter. Petitioner is seeking re-dress of the order of Judge Frederic Ammerman, denying The Complaint of Petitioner on August 8, 2007.

Attached hereto is the order of such denial.

Respectfully submitted,

John F. Nole
John Frederick Nole, AF-0345
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE: August 16, 2007

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
17 AUG 2007 08 29

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RANDALL BRITTON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

NO. 07-701-CD

OPINION

Plaintiff John Frederick Nole ("Nole") is an inmate confined at the State Correctional Institution ("SCI") at Houtzdale. He is serving a life sentence. Defendants are all employees of the PA. Department of Corrections ("DOC") who are assigned to SCI-Houtzdale.

Nole alleges that from March 31, 1971, until September 30, 2003, he was housed in cells without a cellmate. This is apparently referred to as single cell status. On or about December 12, 2006, Nole requested through Defendant Frazer Blake that he be evaluated for single cell status. Both Blake and Defendant Randall Britton informed Nole that he did not qualify for single cell status. Nole appealed this decision to Defendant George Patrick, the Superintendent of SCI-Houtzdale, who never responded in writing to his appeal. On December 26, 2006, Defendant John Bailey informed Nole that his request for Z-Code status had been denied because he did not fit the criteria. Bailey told Nole that his request was denied because Nole had tried to manipulate a Z-Code by placing forged documents in a counselor's file while he was confined at SCI-Greene. Z-Code is used to designate inmates who do not meet the criteria for double or multiple celling, and therefore require single celling due to medical needs, mental health

problems, victimization concerns, or assaultive facility behavior. Nole appealed this decision within the prison and the appeal was denied.

Nole filed a complaint with this Court on May 11, 2007 alleging that the Defendants recklessly, carelessly and negligently placed his life in danger and promoted violence, mental anguish, and a breakdown in safety for the express purpose of breeding volatile circumstances in direct violation of DOC policies for involuntary double celling. He further alleges he is in danger of being assaulted and is being retaliated against. He alleges that the Defendants' actions violate 18 Pa. C.S. §§ 2703, 22704 and 2705 and have discriminated against him by allowing individuals who have been incarcerated for less time than he has and who do not have Z-Code status to have single cells. The Defendants filed Preliminary Objections to the Complaint on July 2, 2007. Under Pa. R.C.P. 1028(c)(1) Nole had the right to file an amended complaint within 20 days after service of the Preliminary Objections. Nole was served with the Preliminary Objections by no later than July 3, 2007. This is the date on the Motion to Amend Complaint he caused to be filed on July 6, 2007 wherein he references the Preliminary Objections. As Nole had the right under Rule 1028 to file an Amended Complaint and no court permission was necessary, the Court did not issue a ruling on the Motion to Amend. In July 10, 2007 the Court issued a briefing schedule on the Defendants' Preliminary Objections. The Defendants' brief was received on August 2, 2007. Nole did not submit a brief. Instead, Nole filed an Amended Complaint on July 30, 2007, outside the required 20 day limit.¹ Therefore, the Court will rule on the Defendants' Preliminary Objections to the original Complaint.

¹ Nole received the Preliminary Objections no later than July 3, 2007. His Amended Complaint is dated July 27, 2007. Even assuming Nole had delivered his Amended Complaint to the prison mailbox on July 27, 2007 he still did not meet the 20 day deadline.

This Court has reviewed the statements of law and precedent set forth in the Defendants' Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein.

Finally, this Court does not believe it will serve any legitimate legal purpose to permit amendment of the Complaint by Nole. Nor is this Court aware of any "seniority" policy or rule which entitles a longer serving inmate to a single cell as opposed to an inmate with a shorter sentence.

ORDER

NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.

BY THE COURT,

/S/ Fredric J Ammerman

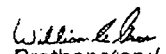
FREDRIC J. AMMERMAN

President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 09 2007

Attest.


Prothonotary/
Clerk of Courts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

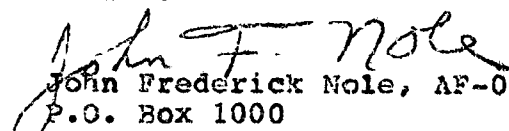
PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing documents, **NOTICE OF APPEAL** from the Denial of Petitioner's Complaint was served upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514(c).

Certified Mail; Postage Pre-Paid; Return Receipt Requested;
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk of Court
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 15, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

NOTICE OF APPEAL

NOW COMES, Petitioner in this instant matter, giving Notice of Appeal in the above caption matter. Petitioner is seeking re-dress of the order of Judge Frederic Ammerman, denying The Complaint of Petitioner on August 8, 2007.

Attached hereto is the order of such denial.

Respectfully submitted,

John F. Nole
John Frederick Nole, AP-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE: August 16, 2007

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
17 AUG 2007 08 30

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RANDALL BRITTON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

NO. 07-701-CD

OPINION

Plaintiff John Frederick Nole ("Nole") is an inmate confined at the State Correctional Institution ("SCI") at Houtzdale. He is serving a life sentence. Defendants are all employees of the PA. Department of Corrections ("DOC") who are assigned to SCI-Houtzdale.

Nole alleges that from March 31, 1971, until September 30, 2003, he was housed in cells without a cellmate. This is apparently referred to as single cell status. On or about December 12, 2006, Nole requested through Defendant Frazer Blake that he be evaluated for single cell status. Both Blake and Defendant Randall Britton informed Nole that he did not qualify for single cell status. Nole appealed this decision to Defendant George Patrick, the Superintendent of SCI-Houtzdale, who never responded in writing to his appeal. On December 26, 2006, Defendant John Bailey informed Nole that his request for Z-Code status had been denied because he did not fit the criteria. Bailey told Nole that his request was denied because Nole had tried to manipulate a Z-Code by placing forged documents in a counselor's file while he was confined at SCI-Greene. Z-Code is used to designate inmates who do not meet the criteria for double or multiple celling, and therefore require single celling due to medical needs, mental health

problems, victimization concerns, or assaultive facility behavior. Nole appealed this decision within the prison and the appeal was denied.

Nole filed a complaint with this Court on May 11, 2007 alleging that the Defendants recklessly, carelessly and negligently placed his life in danger and promoted violence, mental anguish, and a breakdown in safety for the express purpose of breeding volatile circumstances in direct violation of DOC policies for involuntary double celling. He further alleges he is in danger of being assaulted and is being retaliated against. He alleges that the Defendants' actions violate 18 Pa. C.S. §§ 2703, 22704 and 2705 and have discriminated against him by allowing individuals who have been incarcerated for less time than he has and who do not have Z-Code status to have single cells. The Defendants filed Preliminary Objections to the Complaint on July 2, 2007. Under Pa. R.C.P. 1028(c)(1) Nole had the right to file an amended complaint within 20 days after service of the Preliminary Objections. Nole was served with the Preliminary Objections by no later than July 3, 2007. This is the date on the Motion to Amend Complaint he caused to be filed on July 6, 2007 wherein he references the Preliminary Objections. As Nole had the right under Rule 1028 to file an Amended Complaint and no court permission was necessary, the Court did not issue a ruling on the Motion to Amend. In July 10, 2007 the Court issued a briefing schedule on the Defendants' Preliminary Objections. The Defendants' brief was received on August 2, 2007. Nole did not submit a brief. Instead, Nole filed an Amended Complaint on July 30, 2007, outside the required 20 day limit.¹ Therefore, the Court will rule on the Defendants' Preliminary Objections to the original Complaint.

¹ Nole received the Preliminary Objections no later than July 3, 2007. His Amended Complaint is dated July 27, 2007. Even assuming Nole had delivered his Amended Complaint to the prison mailbox on July 27, 2007 he still did not meet the 20 day deadline.

This Court has reviewed the statements of law and precedent set forth in the Defendants' Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein.

Finally, this Court does not believe it will serve any legitimate legal purpose to permit amendment of the Complaint by Nole. Nor is this Court aware of any "seniority" policy or rule which entitles a longer serving inmate to a single cell as opposed to an inmate with a shorter sentence.

ORDER

NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.

BY THE COURT,

/S/ Fredric J Ammerman

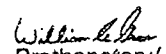
FREDRIC J. AMMERMAN

President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 09 2007

Attest.


Prothonotary/
Clerk of Courts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION

No. 2007-00701-CD

PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing documents, NOTICE OF APPEAL from the Denial of Petitioner's Complaint was served upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514(c).

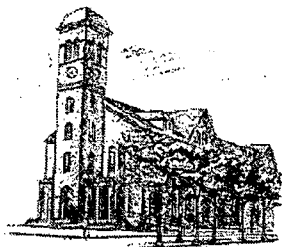
Certified Mail; Postage Pre-Paid; Return Receipt Requested;
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk of Court
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830

L. F. Nole
John Frederick Nole, AP-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 16, 2007



Clearfield County Office of the Prothonotary and Clerk of Courts

COPY

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

November 20, 2007

Commonwealth Court of Pennsylvania
Irvis Office Building
6th Floor, Room 624
Commonwealth Ave. & Walnut St.
Harrisburg, PA 17120

Re: John Frederick Nole
Vs.
George W. Patrick, Rendall Britton, Frazer Blake, John Bailey
No. 07-701-CD
Commonwealth Court No. 1779 CD 2007

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED

014'00/BA
NOV 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

May 16, 2007

Mr. William S Shaw,
Prothonotary
abd Clerk of courts
P.O. Box 549
Clearfield, Pa.16830

RE: No. 2007-00701-CD

Dear Mr. Shaw:

Enclosed, please find five copies of the Complaint I wish to be certified for service.

I understand, I must forward these copies once certified, to the Sheriff's Department, along with a service fee of a specified amount, for service on each defendant mentioned in this complaint?

Thank you for your cooperation and assistance.

Respectfully submitted,

John F. Nole
John Frederick Nole

CC: File

May 22, 2007

Mr. Shaw:

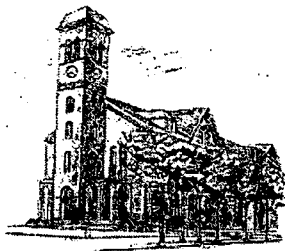
I do not understand why my previous submitted Complaint could not be certified since it had not been served upon any of the Defendants, and I forwarded a sufficient copy to the court of what was to be served - Are you in bed with the officials of the Prison? (over)

I will appeal any negative
Decision to the Commonwealth
Court.

I am also indicating your
prejudice to not certify the
copy of May 16th 2007
in light of no previous
Jury being made.

Sincerely
John F. Nole

cc: File



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

May 18, 2007

John Frederick Nole
AF-0346
P.O. Box 1000
Houtzdale, PA 16698-1000

Dear Mr. Nole:

The five copies of the complaint you mailed for certification are not true copies; therefore I am unable to certify and return to you.

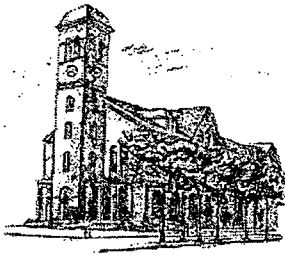
Please submit true copies to be certified and returned.

I am returning one copy with some of the discrepancies highlighted.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Enclosure



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

May 18, 2007

John Frederick Nole
AF-0346
P.O. Box 1000
Houtzdale, PA 16698-1000

Dear Mr. Nole:

The five copies of the complaint you mailed for certification are not true copies; therefore I am unable to certify and return to you.

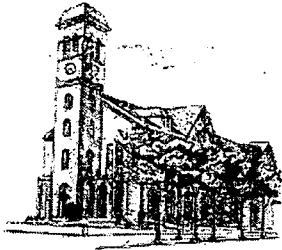
Please submit true copies to be certified and returned.

I am returning one copy with some of the discrepancies highlighted.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Enclosure



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 Phone: (814) 765-2641 Ext. 1330 Fax: (814) 765-7659 www.clearfieldco.org

May 31, 2007

John F. Nole
AF-0346
P.O. Box 1000
Houtzdale, PA 16698-1000

Dear Mr. Nole:

Enclosed please find a copy of the complaint filed on May 11, 2007.

If you want to make any changes in the original complaint you will have to file an amended complaint; otherwise the only certified complaints will be from the May 11th filing.

If you want additional certified copies of the May 11th filing, please submit payment of \$2.25 per copy.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Enclosure

NAME John F. Wade
NUMBER AF-0346
P.O. BOX 1000
HOUTZDALE PA 16698-1000

PA Dept of Corrections
Inmate Mail

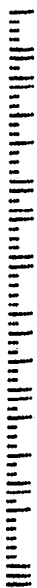


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MAILED FROM ZIP CODE 16651

Ms. Bernie Hudson
Administrative Assistance
Clemfield County Office of
The Prothonotary & Clerk of Court
P.O. Box 549
Clemfield, Pa. 16830

Inmate Mail
PA Department of Corrections

16630+0549-43 E003



John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

May 28, 1000

Ms. Bonnie Hudson
Administrative Assistance
Clearfield County Office of
The Prothonotary & Clerk of Court
P.O. Box 549
Clearfield, Pa. 16830

RE: 2007-00701-CD

Dear Ms. Hudson:

On April 30, 2007, I submitted a Complaint with the court. The complaint was accompanied by an Imforma Pauperis, it was denied on May 2, 2007, stating the Complaint was deemed faivolous and failed to state a claim.

Plaintiff within the specified time paid the \$85.00 filing fee, and under sperate covers submitted a New Compalint to be certified, to which he intended to be serve upon the defendants. The new complaint was refused certification by the prothonotary, even though no action had been served upon any of the defendants.

The prothonotary has prejudice me by compelling me to pay the cost of court on a complaint the court has already ruled, will not succeed.

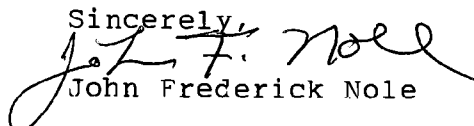
Mr. Shaw has taken it upon himself to litigate for the defendants, even though no complaint has been served, and by failing to certify my complaint of May 16, 2007, as the complaint I intended to serve, upon certification.

Petitioner avers, that only he has been prejudice by the court in this instance, since his complaint of May 16, 2007 stated specific behavior of the defendants, and could survive under the law.

Petitioner is prepared to file a motion or complaint against the arbitrary denial to have his May 16, 2007 complaint certified.

Prothonotary shaw also failed to return all five submitted copies of the May 16, 2007 complaint, perhaps to breach the confidentiality to individual defendants' he familiar with at the Houtzdale Prison?

Petitioner is requesting his complaint of May 16, 2007, be certified for service, and his April 30, 2007 complaint be voided.

Sincerely,

John Frederick Nole

CC: FILE



The following is a list of the names of the persons who have been named in the above mentioned report.

1. Mr. J. H. Smith

2. Mr. J. H. Smith
3. Mr. J. H. Smith
4. Mr. J. H. Smith
5. Mr. J. H. Smith
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90. Mr. J. H. Smith

91. Mr. J. H. Smith

92. Mr. J. H. Smith

93. Mr. J. H. Smith

IN THE SUPERIOR COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,

Petitioner

vs.

GEROGE W PATRICK, et al

Defendants

CIVIL ACTION

No. 2007-00701-CD

NOTICE OF APPEAL

Comes now before the Honorable Court, the above caption petitioner, appealing the arbitrary decision of the Common Pleas Court, dismissing his Application to Proceed in Forma Pauperis, and his Verified Statement of August 27, 2007; and his Notice of Appeal dated August 16, 2007.

Petitioner requested to appeal the denial of his Original Complaint and his amended complaint. The Common Pleas Court, concluded, that petitioner was seeking In Forma Pauperis status of the denial of his Preliminary Injunction, which the court did deny on August 6, 2007, the same date it entered an opinion on petitioner's original complaint and his amended complaint.

Under separate covers dated Sept. 6, 2007, plaintiff submitted In Forma Pauperis and a verified Statement; the opinion of the court, and subsequent pleadings.

Plaintiff is appealing the denial of In Forma Pauperis, and that he be allowed to appeal the Denial of these motions of the Common Pleas Court, in their entirety.

Respectfully submitted,

John F. Nole
John Frederick Nole, AF-0346
Post Office box 1000
Houtsdale, Pa. 15698-1000

DATE: September 7, 2007

IN THE SUPERIOR COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,

Petitioner

vs.

GEROGE W PATRICK, et al

Defendants

CIVIL ACTION

No. 2007-00701-CD

PROOF OF SERVICE

I, the undersigned, hereby certify that a copy of The Notice of Appeal denying Inform Pauper of Plaintiff's Original and Amended Complaint, was served upon the person(s) in the Common Pleas Court, on September 6th and 7th, 2007, in the manner indicated below and under separate covers:

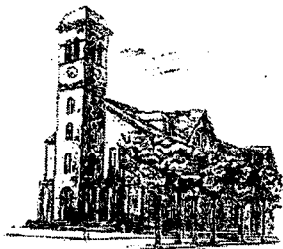
Service by first class mail

Prothonotary/Clerk of Court
Clearfield County Courthouse
P.O. Box 540
Clearfield, Pa. 16820

Respectfully submitted

John Frederick Nole, AP-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE: September 7, 2007



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

August 17, 2007

John Frederick Nole
AF0346
SCI Houtzdale
PO Box 1000
Houtzdale, PA 16698

Dear Mr. Nole:

I received your Notice of Appeal on August 14, 2007. Your Notice has been stamped "Received." It will not be forwarded to the appellate court until you have submitted the documents required by the Pennsylvania Rules of Appellate Procedure as well as the applicable fees. A check or money order payable to the Prothonotary in the amount of \$45.00 and a check or money order payable to the appropriate appellate court in the amount of \$60.00 are also required. An additional copy of your Notice of Appeal must also be submitted.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

8-14-07

WILLIAM A. SHAW

PROTHONOTARY/CLERK OF COURTS

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,	:	No. 07-00701-CD
Plaintiff	:	
	:	
vs.	:	
	:	
GEORGE W. PATRICK, et al	:	
Defendants	:	

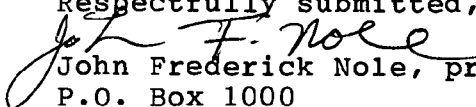
NOTICE OF APPEAL

AND NOW, upon written notification of the court of Clear-Field County, Judge Ammerman, dismissing Plaintiff Request for a Preliminary Injunction against the Defendants, for Random Double Celling without a capability scheme, and which celling is based purely on cell availability, which places lives in danger, and creates a Reckless and Dangerous living situation at the prison, which is numerated in Petitioner's Amended Complaint of July 27, 2007.

Plaintiff in this instant matter gives this Notice of Appeal, based on Judge Fredric J Ammerman's, abuse of discretion, failing to hold a hearing on this question, and acknowledging the supportive affidavits on the Statements, a testing to these violations.

Plaintiff in this instant matter request a decision by the Commonwealth Court on this appeal, in lieu of retaliatory measures and practices taken by the Defendants at SCI-Houtzdale, against Petitioner.

Respectfully submitted,


John Frederick Nole, pro se
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, et al
Defendants

:
:
:
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:
:

No. 07-00701-CD

PROOF OF SERVICE

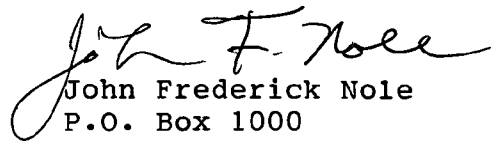
I, the undersigned, hereby certify that a copy of the
Petitioner's Notice of Appeal on Denial of Preliminary Injunctive
Relief was served upon the person(s) in the manner indicated
below:

Service by first class mail
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830

DATED: August 13, 2007


John Frederick Nole
P.O. Box 1000
Houtzdale, Pa. 16698-
1000

NAME John T. Mole
NUMBER AF0348
P.O. BOX 1000
HOUTZDALE PA 16698-1000

PA Dept of Corrections
Inmate Mail

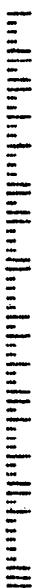


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Clerk / Prothonotary
for Clearfield County
Court House
P.O. Box 549
Clearfield, Pa. 16830

Inmate Mail
PA Department of Corrections

16830+0343-43 B085



to conform the appeal period for civil orders changing venue pursuant to Pa.R.A.P. 311(c).

The portion of the Note suggesting the necessity of taking an appeal within the 20 day pleading period is misleading and is deleted. For this reason, the bracketed material of the Note is deleted.

Explanatory Comment—2002

See Comment following Pa.R.A.P., Rule 511.

Rule 904. Content of the Notice of Appeal

(a) **Form.** The notice of appeal shall be in substantially the following form:

COURT OF COMMON PLEAS OF _____ COUNTY

A.B., Plaintiff:

v.

C.D., Defendant:

NOTICE OF APPEAL

Notice is hereby given that C.D., defendant above named, hereby appeals to the (Supreme) (Superior) (Commonwealth) Court of Pennsylvania from the order entered in this matter on the _____ day of _____, 19____. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

(S) _____

(Address and telephone number)

(b) **Caption.** The parties shall be stated in the caption as they stood upon the record of the lower court at the time the appeal was taken.

(c) **Request for transcript.** The request for transcript contemplated by Rule 1911 (request for transcript) or a statement signed by counsel that there is either no verbatim record of the proceedings or the complete transcript has been lodged of record, shall accompany the notice of appeal, but the absence of or defect in the request for transcript shall not affect the validity of the appeal.

(d) **Docket entry.** The notice of appeal shall include a statement that the order appealed from has been entered in the docket. A copy of the docket entry showing the entry of the order appealed from shall be attached to the notice of appeal.

(e) **Content in criminal cases.** When the Commonwealth takes an appeal pursuant to Rule 311(d), the notice of appeal shall include a certification by counsel that the order will terminate or substantially handicap the prosecution.

Note. The Offense Tracking Number (OTN) is required only in an appeal in a criminal proceeding. It enables the Administrative Office of the Pennsylvania Courts to collect and forward to the Pennsylvania State Police information pertaining to the disposition of all criminal cases as provided by the

Criminal History Record Information Act, 18 Pa.C.S. § 9101 et seq.

The 1986 amendment requires that the 'notice' of appeal include a statement that the order appealed from has been entered in the docket. The 1986 amendment deletes the requirement that the appellant certify that the order has been reduced to judgment. This omission does not eliminate the requirement of reducing an order to judgment before there is a final appealable order where required by applicable practice or case law.

The 1997 amendment changes the word "order" to "request" in order to eliminate any unintended implication that a court order is required. No court order is required to obtain a transcript of the proceedings. See Pa.R.J.A. 5000.5 and the 1997 amendment to subdivision (a) of Rule 1911.

With respect to subdivision (e), in *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985), the Supreme Court held that the Commonwealth's certification that an order will terminate or substantially handicap the prosecution is not subject to review as a prerequisite to the Superior Court's review of the merits of the appeal. Thus, the need for a detailed analysis of the effect of the order, formerly necessarily a part of the Commonwealth's appellate brief, was eliminated. See also *Commonwealth v. Deans*, 530 Pa. 514, 610 A.2d 32 (1992); *Commonwealth v. Cohen*, 529 Pa. 552, 605 A.2d 1212 (1992) (allowing appeals by the Commonwealth from adverse rulings on motions in limine). Accordingly, the 1997 amendment added subdivision (e) as a requirement when the Commonwealth takes an appeal pursuant to Rule 311(d).

A party filing a cross appeal should identify it as a cross appeal in the notice of appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rules 2113, 2136 and 2185 regarding briefs in cross appeals and Rule 2322 regarding oral argument in multiple appeals. Adopted Nov. 5, 1975, effective July 1, 1976. Amended June 23, 1976, effective July 1, 1976; Dec. 11, 1978, effective Dec. 30, 1978; April 26, 1982, effective retroactive to July 15, 1981; Dec. 16, 1983, effective Jan. 1, 1984; Dec. 10, 1986, effective Jan. 31, 1987; July 7, 1997, effective in 60 days; Oct. 18, 2002, effective Dec. 2, 2002.

Explanatory Comment—2002

See Comment following Pa.R.A.P., Rule 511.

Rule 905. Filing of Notice of Appeal

(a) **Filing with clerk.** Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by Rule 906 (service of notice of appeal), shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909 shall also be filed with the clerk of the trial court. Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date of receipt, and that date shall constitute the date when the appeal was taken, which date shall be shown on the docket. If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an

additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed. A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) Transmission to appellate court. The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal showing the date of receipt, the related proof of service and a receipt showing collection of any docketing fee in the appellate court required under Subdivision (c). The clerk shall also transmit with such papers:

1. a copy of any order for transcript;
2. a copy of any verified statement, application or other document filed under Rule 551 through Rule 561 relating to in forma pauperis; and
3. if the appeal is to the Supreme Court, the jurisdictional statement required by Rule 909.

(c) Fees. The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27 (fees and costs in appellate courts and on appeal).

Note: Insofar as the clerk or prothonotary of the lower court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of certiorari in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 (preparation and transmission of record and related matters).

As to number of copies, see note to Rule 124 (form of papers; number of copies). The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502 (financial regulations).

Pending adoption of such rules the subject is regulated by Paragraph 4 of the Order amending this rule, which provides as follows:

"4. Pending adoption of initial regulations under 42 Pa.C.S. § 3502 (financial regulations), the docketing fee (currently \$12 in the Supreme Court and the Superior Court and \$25 in the Commonwealth Court) paid through the clerk or prothonotary of the lower court pursuant to Rule 905(c) (fees) of the Pennsylvania Rules of Appellate Procedure shall be transmitted as follows:

(a) If the docketing fee is tendered by check payable to the appellate prothonotary, the clerk or prothonotary of the lower court shall transmit the check pursuant to Rule 905(b).

(b) If the docketing fee is tendered by check payable to the clerk or prothonotary of the lower court he or she shall endorse it without recourse to the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(c) If the docketing fee is tendered in cash the clerk or prothonotary of the lower court shall draw a check in like amount on the account of such clerk or prothonotary to

the order of the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(d) In matters arising under 42 Pa.C.S. § 723 (appeals from the Commonwealth Court), the appellant shall tender the docketing fee in the Supreme Court to the Prothonotary of the Commonwealth Court by check payable to the order of the Prothonotary of the Supreme Court, which shall be transmitted pursuant to Rule 905(b)."

The better practice will be to pay the fee for filing the notice of appeal in the lower court and the docketing fee in the appellate court by separate checks payable to the respective clerks or prothonotaries.

The 1982 amendment to Subdivision (a) corrects deficiencies in previous practice which were illustrated in *State Farm Mutual Auto. Ins. Co. v. Schultz*, Pa.Super., 421 A.2d 1224 (1980).

Adopted Nov. 5, 1975, effective July 1, 1976. Amended Dec. 11, 1978, effective Dec. 30, 1978; May 16, 1979, effective 120 days after June 2, 1979; April 26, 1982; Dec. 10, 1986, effective Jan. 31, 1987.

Explanatory Comment—1979

The appellate prothonotaries have reported that on numerous occasions an appeal is taken in the lower court, the appellant fails to docket the appeal, the appellee fails to move for dismissal under Rule 1971, and a record arrives in the appellate court without prior notice to the court. Hereafter a duplicate set of appeal papers will be filed in the lower court and the clerk of the lower court will collect the appellate docketing fee and notify the appellate prothonotary of the taking of an appeal by transmitting one copy of the appeal papers. The appeal will thus be self-docketing and Rule 1971 is rescinded as obsolete. Among other things, this procedure will facilitate the sua sponte dismissal of out of time appeals, since the appellate court will immediately know the date the appeal was taken. In order to permit the appellate prothonotary to contact the parties or counsel, a new requirement is added that copies of the proof of service be furnished to the clerk of the lower court at the time the appeal is filed. A related temporary provision governing the internal transmission of the docketing fee to the appellate prothonotary is included in the Order adopting the amendments.

Rule 906. Service of Notice of Appeal

(a) General Rule. Concurrently with the filing of the notice of appeal under Rule 905 (filing of notice of appeal), the appellant shall serve copies thereof, and of any order for transcript, and copies of a proof of service showing compliance with this rule, upon:

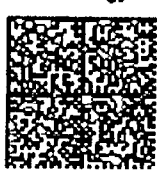
(1) All parties to the matter in the trial court, including parties previously dismissed pursuant to an interlocutory order unless; (i) the interlocutory order of dismissal was reviewed by an appellate court and affirmed; or (ii) the interlocutory order of dismissal was made final under Rule 341(c) and no party appealed from that date;

(2) The judge of the court below, whether or not the reasons for the order appealed from already appear of record;

NAME John Frederick Nole
NUMBER AF-0346
P.O. BOX 1000
HOUTZDALE PA 16698-1000

PA Dept of Corrections
Inmate Mail

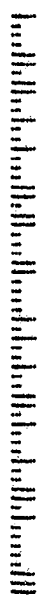
William A Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O Box 549
Clearfield, Pa. 16830



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Inmate Mail
PA Department of Corrections

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COMMONWEALTH COURT OF PENNSYLVANIA

RECEIVED
PROTHONOTARY'S OFFICE
8/17/07
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

August 15, 2007

MICHAEL F. KRIMMEL
OFFICE OF THE PROTHONOTARY
624 IRVIS OFFICE BUILDING
HARRISBURG, PA 17120

TELEPHONE
(717) 255-1650

William A. Shaw, Prothonotary
Court of Common Pleas of Clearfield County
230 East Market Street
Clearfield, PA 16830

Re: John Frederick Nole v. George W. Patrick et al.
Trial Court No. 07-701-CD

Dear Mr. Shaw:

A notice of appeal in the above captioned matter was received by this court on August 14, 2007. In accordance with Pa. R.A.P. 905(a), we have stamped the notice of appeal with the date of receipt and are hereby transmitting it to you for processing.

We note that the notice of appeal does not contain a statement or application regarding in forma pauperis status in the appellate court. In addition, the notice of appeal does not contain copies of docket entries, or a statement or proposed order regarding a transcript.

Kindly process this document in accordance with Pa. R.A.P. 905.

Sincerely,

Michael F. Krimmel
Deputy Prothonotary/Chief Clerk

MFK/gb

Enclosure

cc: Valeria Streisfeld, Administrative Assistant II

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

No. 07-00701 CD

vs.

GEORGE W. PATRICK, et al
Defendants

:

NOTICE OF APPEAL

AND NOW, upon written notification of the court of Clear-Field County, Judge Ammerman, dismissing Plaintiff Request for a Preliminary Injunction against the Defendants, for Random Double Celling without a capability scheme, and which celling is based purely on cell availability, which places lives in danger, and creates a Reckless and Dangerous living situation at the prison, which is numerated in Petitioner's Amended Complaint of July 27, 2007.

Plaintiff in this instant matter gives this Notice of Appeal, based on Judge Fredric J Ammerman's, abuse of discretion, failing to hold a hearing on this question, and acknowledging the supportive affidavits on the Statements, a testing to these violations.

Plaintiff in this instant matter request a decision by the Commonwealth Court on this appeal, in lieu of retaliatory measures and practices taken by the Defendants at SCI-Houtzdale, against Petitioner.

Respectfully submitted,

John F. Nole
John Frederick Nole, pro se
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
19 AUG 2007 08 10

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, et al
Defendants

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No. 07-00701-CD

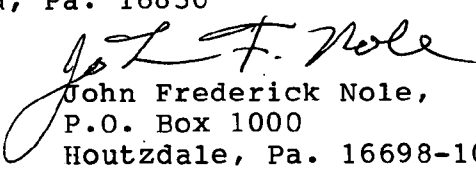
PROOF OF SERVICE

I, the undersigned, hereby certify that a copy of the
Petitioner's Notice of Appeal on Denial of Preliminary Injunctive
Relief was served upon the person(s) in the manner indicated
below:

Service by first class mail
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole,
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RENDALL BRITON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

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*
*

NO. 07-701-CD

ORDER

NOW, this 8th day of August, 2007, the Court being in receipt of the Plaintiff's *pro* se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or precedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISSED.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 08 2007

Attest.

William H. Shaw
Prothonotary/
Clerk of Courts

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
14 AUG 2007
08 11

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

No. 07-00701-CD

vs.

GEORGE W. PATRICK, et al
Defendants

NOTICE OF APPEAL

AND NOW, upon written notification of the court of Clear-Field County, Judge Ammerman, dismissing Plaintiff Request for a Preliminary Injunction against the Defendants, for Random Double Celling without a capability scheme, and which celling is based purely on cell availability, which places lives in danger, and creates a Reckless and Dangerous living situation at the prison, which is numerated in Petitioner's Amended Complaint of July 27, 2007.

Plaintiff in this instant matter gives this Notice of Appeal, based on Judge Fredric J Ammerman's, abuse of discretion, failing to hold a hearing on this question, and acknowledging the supportive affidavits on the Statements, a testing to these violations.

Plaintiff in this instant matter request a decision by the Commonwealth Court on this appeal, in lieu of retaliatory measures and practices taken by the Defendants at SCI-Houtzdale, against Petitioner.

Respectfully submitted,

John Frederick Nole
John Frederick Nole, pro se
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

No. 07-00701-CD

vs.

GEORGE W. PATRICK, et al
Defendants

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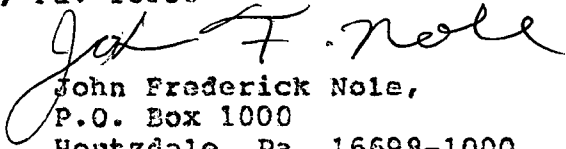
PROOF OF SERVICE

I, the undersigned, hereby certify that a copy of the
Petitioner's Notice of Appeal on Denial of Preliminary Injunctive
Relief was served upon the person(s) in the manner indicated
below:

Service by first class mail
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole,
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RENDALL BRITON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

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NO. 07-701-CD

ORDER

NOW, this 8th day of August, 2007, the Court being in receipt of the Plaintiff's *pro* se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or precedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISSED.

BY THE COURT,

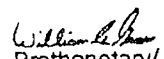
/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 08 2007

Attest.


Prothonotary/
Clerk of Courts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

No. 07-00701-CR

vs.

GEORGE W. PATRICK, et al
Defendants

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
14 AUG 2007 08 11

NOTICE OF APPEAL

AND NOW, upon written notification of the court of Clear-Field County, Judge Ammerman, dismissing Plaintiff Request for a Preliminary Injunction against the Defendants, for Random Double Celling without a capability scheme, and which celling is based purely on cell availability, which places lives in danger, and creates a Reckless and Dangerous living situation at the prison, which is numerated in Petitioner's Amended Complaint of July 27, 2007.

Plaintiff in this instant matter gives this Notice of Appeal, based on Judge Fredric J Ammerman's, abuse of discretion, failing to hold a hearing on this question, and acknowledging the supportive affidavits on the Statements, a testing to these violations.

Plaintiff in this instant matter request a decision by the Commonwealth Court on this appeal, in lieu of retaliatory measures and practices taken by the Defendants at SCI-Houtzdale, against Petitioner.

Respectfully submitted,

John Frederick Nole
John Frederick Nole, pro se
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 13, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

No. 07-00791-CD

vs.

GEORGE W. PATRICK, et al
Defendants

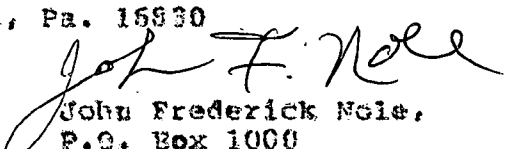
PROOF OF SERVICE

I, the undersigned, hereby certify that a copy of the
Petitioner's Notice of Appeal on Denial of Preliminary Injunctive
Relief was served upon the person(s) in the manner indicated
below:

Service by first class mail
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole,
P.O. Box 1000
Houtzdale, Pa. 16896-1000

DATED: August 13, 2007

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RENDALL BRITON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

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NO. 07-701-CD

ORDER

NOW, this 8th day of August, 2007, the Court being in receipt of the Plaintiff's *pro se* "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or precedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISSED.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 08 2007

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

8-21-07

WILLIAM A. SHAW

PROTHONOTARY/CLERK OF COURTS

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

NOTICE OF APPEAL

NOW COMES, Petitioner in this instant matter, giving Notice of Appeal in the above caption matter. Petitioner is seeking redress of the order of Judge Frederic Ammerman, denying The Complaint of Petitioner on August 8, 2007.

Attached hereto is the order of such denial.

Respectfully submitted,

John F. Nole
John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE:

Aug. 16, 2007

NO ORDER

ATTACH

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

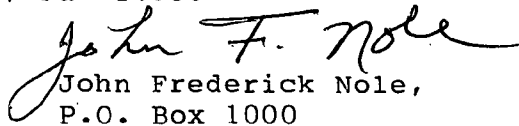
PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing documents, **Notice of Appeal**, from the Denial of Petitioner's Complaint was served upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514(c).

Certified Mail; Postage Pre-Paid; Return Receipt Requested;
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830

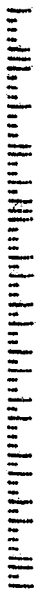

John Frederick Nole,
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 16, 2007

NAME John Frederick Nole
NUMBER AF-0346
P.O. BOX 1000
HOUTZDALE PA 16698-1000

Inmate Mail
PA Department of Corrections

1712043333-55



Commonwealth Court of Pennsylvania
Prothonotary
628 Floors Irvld Office Building
Harrisburg, Pa. 17120

PA Dept of Corrections
Inmate Mail



UNITED STATES POSTAGE
PRIMEY BOWES
02 1A \$00.580
0004629753 AUG13 2007
MAILED FROM ZIP CODE 16651

NAME John F. Nole

NUMBER AF 0346

P.O. BOX 1000

HOUTZDALE, PA 16698-1000

PA Dept of Corrections
Inmate Mail



02 1A
0004629753
\$ 05.38⁰⁰
AUG 17 2007
MAILED FROM ZIP CODE 16651

William A. Sahw,
Prothonotary/Clerk of Court
P.O. Box 549
Clearfield County Courthouse
Clearfield, Pa. 16830

Inmate Mail
PA Department of Corrections

7001 0320 0002-5674

PLACE STICKER AT TOP OF ENVELOPE TO
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL



7001 0320 0002 5674

1779 CD078

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 1779CD2007



Page 1 of 4

November 20, 2007

07-701-CD

John Frederick Nole,
Appellant
v.
George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 28, 2007 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type: Civil Action Law-Prisoner

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Appellant Nole, John Frederick

Pro Se: Pro Se

Appoint Counsel Status:

IFP Status: Yes

Attorney: Nole, John Frederick

Law Firm:

Address: AF-0346, SCI-Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000
Phone No.:

Appellee Patrick, George W.

Pro Se:

Appoint Counsel Status:

IFP Status:

Attorney: McGovern, Michael James

Law Firm: PA Department of Corrections

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

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
26 NOV 2007 08 26

FILED

NOV 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

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.

#20

CommonwealthDocketSheet

CommonwealthCourt of Pennsylvania

DocketNumber: 1779CD2007

Page2of4

November20,2007



TRIALCOURT/AGENCYINFORMATION

CourtBelow: ClearfieldCountyCourt of CommonPleas

County: Clearfield

Division: Civil

Date of OrderAppealedFrom: August8,2007

JudicialDistrict: 46

Date DocumentsReceived: September20,2007

Date Notice of AppealFiled: August28,2007

OrderType: Order

Judge: Ammerman,FredricJ.
PresidentJudge

LowerCourtDocketNo.: 2007-00701-CD

ORIGINALRECORDCONTENTS

BRIEFINGSCHEDULE

PACMSWebDocketSheet

Recent entries made in the appellate court filing offices may not be immediately reflected on web generated dockets sheets.
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or omissions on these web dockets sheets.

CommonwealthDocketSheet

CommonwealthCourtofPennsylvania

DocketNumber: 1779CD2007

Page3of4

November20,2007



DOCKETENTRIES			
Filed Date	DocketEntry/DocumentName	PartyType	FiledBy
August28,2007	NoticeofAppealFiled	Appellant	Nole,JohnFrederick
September21,2007	SendBackforCorrection \$60.00orcompleted,signed,datedandreturnedIFPforms		CommonwealthCourtFilingOffice
September28,2007	CompliedwithSendback dated9/21/2007	Appellant	Nole,JohnFrederick
September28,2007	ApplicationtoProceedInFormaPauperis	Appellant	Nole,JohnFrederick
September28,2007	NoticeExited		CommonwealthCourtFilingOffice
October1,2007	OrderGrantingApplicationtoProceedInFormaPauperis		PerCuriam
November13,2007	LettertoTrialJudgeRegardingDelinquentRecord		Darlington,G.Ronald

PACMSWebDocketSheet

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.

2:38 P.M.

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 1779CD2007

Page 4 of 4

November 20, 2007



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.

11/20/2007

5172

FILED

NOV 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

07-701-CD


**John Frederick Nole
VS.**

George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from No. 1 to No. 21, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is November 20, 2007.


Prothonotary/Clerk of Courts

(seal)

Date: 11/20/2007

Time: 05:39 PM

Page 1 of 2

Orfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
05/02/2007	New Case Filed.	No Judge
	Filing: IFP Petition RE: Civil Complaint. Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918858 Dated: 5/2/2007 Amount: \$.00 (Cash) 2 Cert. to Plaintiff.	No Judge
	Order, filed 2 cert. to Plaintiff with IFP Denial Letter. NOW, this 2nd day of May, 2007, ORDER of this Court that the Application for Proceed In Forma Pauperis be and is hereby DENIED.	Fredric Joseph Ammerman
05/11/2007	Filing: Civil Complaint Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918977 Dated: 05/11/2007 Amount: \$85.00 (Money order) filed by s/John F. Nole No CC	No Judge
06/18/2007	Praeipce For Entry of Appearance, filed on behalf of all Defendants, enter appearance of Michael J. McGovern, Assistant Counsel, Pennsylvania Department of Corrections. 1CC to Atty	No Judge
07/02/2007	Preliminary Objections, filed by s/Michael J. McGovern One CC Attorney McGovern	No Judge
07/06/2007	Motion to Amend Complaint, filed by Plaintiff. 1 Cert. to Plaintiff.	No Judge
07/10/2007	Order, this 10th day of July, 2007, Preliminary Objections shall be decided without oral argument. Both parties shall have no more than 30 days from this date to supply the Court with an appropriate brief on the issues. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Plff, SCI houtzdale; 1CC Atty. mcGovern	Fredric Joseph Ammerman
07/30/2007	Amended Complaint, filed by Plaintiff. 2 Cert. copies.	No Judge
	Proof of Service, filed by Plaintiff, Served copy of Amended Complaint on Asst. Counsel, Michael J. McGovern. 2 Cert. copies.	No Judge
	Plaintiff's Motion for Preliminary Injunction, filed by Plaintiff. 2 Cert. copies.	No Judge
	Certificate of Service, filed by Plaintiff, 2 cert. copies. Served copy of Motion for Injunction Relief on Michael J. McGovern.	No Judge
08/07/2007	Motion to Moot Previous Filings, filed by Plaintiff 2 Cert. to Plaintiff.	No Judge
08/08/2007	Order NOW, this 8th day of August 2007, the Court being in receipt of the Plaintiff's pro se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or presedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISED. BY THE COURT: /s/ Frederic J. Ammerma, P. Judge. 1CC plff @ AF0346 SCI Houtzdale and 1CC Atty McGovern	Fredric Joseph Ammerman
08/09/2007	Opinion and Order, filed Cert. to Plaintiff, Atty. McGovern NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.	Fredric Joseph Ammerman
08/14/2007	Notice of Appeal, received from Plaintiff. Sent Letter to Plaintiff requesting Payment of \$60.00 to Appellate Court and \$45.00 payment to Prothonotary	No Judge

Date: 11/20/2007

Time: 05:39 PM

Page 2 of 2

Field County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
08/17/2007	Received from Commonwealth Court of PA: Copies of Notice of Appeal received by Comm. Court 8-14-07 and letter regarding omissions in Notice of Appeal	No Judge
08/21/2007	Notice of Appeal, received from Plaintiff, (No Payment or order attached.)	No Judge
08/23/2007	Application to Proceed In Forma Pauperis, filed by Plaintiff. 2 Cert. to Plaintiff	No Judge
	Notice of Appeal, received from Commonwealth Court with Letter from Commonwealth Court.	No Judge
08/28/2007	Application for leave In Forma Pauperis, filed by Plaintiff. 2 Cert. Plaintiff.	No Judge
	Notice of Appeal, filed Re: August 8, 2007, Order.	No Judge
08/30/2007	Order, this 29th day of August, 2007, Plaintiff's request to proceed in forma pauperis is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Plff.	Fredric Joseph Ammerman
09/10/2007	Application In Leave to Appeal in Forma Pauperis Pursuant to PA.R.A.P. 553, filed by s/ John Frederick Nole-plff. No CC.	No Judge
	History of Appeal Process, filed by s/ John Frederick Nole-plff. No CC.	No Judge
10/17/2007	Sheriff Return, June 5, 2007 at 11:10 am Served the within Complaint on George W. Patrick to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Randall E. Britton to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Frazer Blake to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on John Bailey to Doretta Chemcharich, person in charge. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Nole \$100.00	No Judge
11/20/2007	Commonwealth Docket Sheet. Printed and filed November 20, 2007. (Original not received from Commonwealth Court.) Commonwealth Court Number 1779 CD 2007. November 20, 2007, Mailed Appeal to Commonwealth Court. Letters, Re: Notification of mailing appeal mailed to John Frederick Nole and Michael J. McGovern, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	No Judge Fredric Joseph Ammerman

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 20 2007

Attest.

William A. B...
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

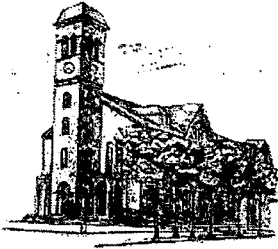
No. 07-701-CD

John Frederick Nole

VS.

George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

<i>ITEM NO.</i>	<i>DATE OF FILING</i>	<i>NAME OF DOCUMENT</i>	<i>NO. OF PAGES</i>
01	05/02/07	IFP Petition, Re: Civil Complaint	02
02	05/02/07	Order, Re: IFP Denied	02
03	05/11/07	Civil Complaint	10
04	06/18/07	Praecipe for Entry of Appearance	02
05	07/02/07	Preliminary Objections	11
06	07/06/07	Motion to Amend Complaint	02
07	07/10/07	Order, RE: briefs to be submitted	01
08	07/30/07	Amended Complaint with Proof of Service	37
09	07/30/07	Plaintiff's Motion for Preliminary Injunction with Certificate of Service	08
10	08/07/07	Motion to Moot Previous Filings	03
11	08/08/07	Order, Re: Motion for Injunction Relief Dismissed	01
12	08/09/07	Opinion and Order; Plaintiff's Complaint Dismissed with prejudice	06
13	08/23/07	Application to Proceed In Forma Pauperis	01
14	08/28/07	Application for Leave In Forma Pauperis	02
15	08/28/07	Notice of Appeal	02
16	08/30/07	Order, Re: In Forma Pauperis Denied	01
17	09/10/07	Application in Leave to Appeal In Forma Pauperis Pursuant to Pa.R.A.P. 553	03
18	09/10/07	History of Appeal Process	02
19	10/17/07	Sheriff Return	05
20	11/20/07	Commonwealth Docket Sheet, Docket Number 1779 CD 2007	04
21	11/20/07	Letters, Re: Notification of mailing appeal mailed to John Frederick Nole and Michael J. McGovern, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	04



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ▪ Phone: (814) 765-2641 Ext. 1330 ▪ Fax: (814) 765-7659 ▪ www.clearfieldco.org

COPY

Fredric J. Ammerman, P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

John Frederick Nole
AF 0346
SCI Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000

Michael J. McGovern, Esq.
PA Dept. of Corrections
55 Utley Drive
Camp Hill, PA 17011

John Frederick Nole
Vs.
George W. Patrick, Rendall Britton, Frazer Blake, and John Bailey

Court No. 07-701-CD; Commonwealth Court No. 1779 CD 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on November 20, 2007.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

FILED
014:00301
NOV 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

#21

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 07-701-CD

John Frederick Nole

VS.

George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

<i>ITEM NO.</i>	<i>DATE OF FILING</i>	<i>NAME OF DOCUMENT</i>	<i>NO. OF PAGES</i>
01	05/02/07	IFP Petition, Re: Civil Complaint	02
02	05/02/07	Order, Re: IFP Denied	02
03	05/11/07	Civil Complaint	10
04	06/18/07	Praecipe for Entry of Appearance	02
05	07/02/07	Preliminary Objections	11
06	07/06/07	Motion to Amend Complaint	02
07	07/10/07	Order, RE: briefs to be submitted	01
08	07/30/07	Amended Complaint with Proof of Service	37
09	07/30/07	Plaintiff's Motion for Preliminary Injunction with Certificate of Service	08
10	08/07/07	Motion to Moot Previous Filings	03
11	08/08/07	Order, Re: Motion for Injunction Relief Dismissed	01
12	08/09/07	Opinion and Order; Plaintiff's Complaint Dismissed with prejudice	06
13	08/23/07	Application to Proceed In Forma Pauperis	01
14	08/28/07	Application for Leave In Forma Pauperis	02
15	08/28/07	Notice of Appeal	02
16	08/30/07	Order, Re: In Forma Pauperis Denied	01
17	09/10/07	Application in Leave to Appeal In Forma Pauperis Pursuant to Pa.R.A.P. 553	03
18	09/10/07	History of Appeal Process	02
19	10/17/07	Sheriff Return	05
20	11/20/07	Commonwealth Docket Sheet, Docket Number 1779 CD 2007	04

Date: 11/20/2007

Time: 05:33 PM

Page 1 of 2

Jefferson County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
05/02/2007	New Case Filed.	No Judge
	Filing: IFP Petition RE: Civil Complaint. Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918858 Dated: 5/2/2007 Amount: \$.00 (Cash) 2 Cert. to Plaintiff.	No Judge
	Order, filed 2 cert. to Plaintiff with IFP Denial Letter. NOW, this 2nd day of May, 2007, ORDER of this Court that the Application for Proceed In Forma Pauperis be and is hereby DENIED.	Fredric Joseph Ammerman
05/11/2007	Filing: Civil Complaint Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918977 Dated: 05/11/2007 Amount: \$85.00 (Money order) filed by s/John F. Nole No CC	No Judge
06/18/2007	Praeipce For Entry of Appearance, filed on behalf of all Defendants, enter appearance of Michael J. McGovern, Assistant Counsel, Pennsylvania Department of Corrections. 1CC to Atty	No Judge
07/02/2007	Preliminary Objections, filed by s/Michael J. McGovern One CC Attorney McGovern	No Judge
07/06/2007	Motion to Amend Complaint, filed by Plaintiff. 1 Cert. to Plaintiff.	No Judge
07/10/2007	Order, this 10th day of July, 2007, Preliminary Objections shall be decided without oral argument. Both parties shall have no more than 30 days from this date to supply the Court with an appropriate brief on the issues. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Plff, SCI houtzdale; 1CC Atty. mcGovern	Fredric Joseph Ammerman
07/30/2007	Amended Complaint, filed by Plaintiff. 2 Cert. copies.	No Judge
	Proof of Service, filed by Plaintiff, Served copy of Amended Complaint on Asst. Counsel, Michael J. McGovern. 2 Cert. copies.	No Judge
	Plaintiff's Motion for Preliminary Injunction, filed by Plaintiff. 2 Cert. copies.	No Judge
	Certificate of Service, filed by Plaintiff, 2 cert. copies. Served copy of Motion for Injunction Relief on Michael J. McGovern.	No Judge
08/07/2007	Motion to Moot Previous Filings, filed by Plaintiff 2 Cert. to Plaintiff.	No Judge
08/08/2007	Order NOW, this 8th day of August 2007, the Court being in receipt of the Plaintiff's pro se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or presedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate campatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISED. BY THE COURT: /s/ Frederic J. Ammerma, P. Judge. 1CC plff @ AF0346 SCI Houtzdale and 1CC Atty McGovern	Fredric Joseph Ammerman
08/09/2007	Opinion and Order, filed Cert. to Plaintiff, Atty. McGovern NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.	Fredric Joseph Ammerman
08/14/2007	Notice of Appeal, received from Plaintiff. Sent Letter to Plaintiff requesting Payment of \$60.00 to Appellate Court and \$45.00 payment to Prothonotary	No Judge

Date: 11/20/2007

Time: 05:33 PM

Page 2 of 2



field County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2007-00701-CD

Current Judge: Fredric Joseph Ammerman

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
08/17/2007	Received from Commonwealth Court of PA: Copies of Notice of Appeal received by Comm. Court 8-14-07 and letter regarding omissions in Notice of Appeal	No Judge
08/21/2007	Notice of Appeal, received from Plaintiff, (No Payment or order attached.)	No Judge
08/23/2007	Application to Proceed In Forma Pauperis, filed by Plaintiff. 2 Cert. to Plaintiff	No Judge
	Notice of Appeal, received from Commonwealth Court with Letter from Commonwealth Court.	No Judge
08/28/2007	Application for leave In Forma Pauperis, filed by Plaintiff. 2 Cert. Plaintiff.	No Judge
	Notice of Appeal, filed	No Judge
	Re: August 8, 2007, Order.	
08/30/2007	Order, this 29th day of August, 2007, Plaintiff's request to proceed in forma pauperis is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Plff.	Fredric Joseph Ammerman
09/10/2007	Application In Leave to Appeal in Forma Pauperis Pursuant to PA.R.A.P. 553, filed by s/ John Frederick Nole-plff. No CC.	No Judge
	History of Appeal Process, filed by s/ John Frederick Nole-plff. No CC.	No Judge
10/17/2007	Sheriff Return, June 5, 2007 at 11:10 am Served the within Complaint on George W. Patrick to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Randall E. Britton to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on Frazer Blake to Doretta Chemcharich, person in charge. June 5, 2007 at 11:10 am Served the within Complaint on John Bailey to Doretta Chemcharich, person in charge. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Nole \$100.00	No Judge
11/20/2007	Commonwealth Docket Sheet. Printed and filed November 20, 2007. (Original not received from Commonwealth Court.) Commonwealth Court Number 1779 CD 2007.	No Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 20 2007

Attest.

Prothonotary

Prothonotary/
Clerk of Courts

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 1779CD2007



Page 1 of 4

November 20, 2007

07-701-CD

John Frederick Nole,
Appellant
v.
George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 28, 2007 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type: Civil Action Law-Prisoner

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Appellant Nole, John Frederick

Pro Se: Pro Se

Appoint Counsel Status:

IFP Status: Yes

Attorney: Nole, John Frederick

Law Firm:

Address: AF-0346, SCI-Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000
Phone No.:

Appellee Patrick, George W.

Pro Se:

Appoint Counsel Status:

IFP Status:

Attorney: McGovern, Michael James

Law Firm: PA Department of Corrections

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

COPY
FILED
NOV 20 2007
William A. Shaw
Prothonotary/Clerk of Courts

PACMS Web Docket Sheet

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

#20

CommonwealthDocketSheet

CommonwealthCourtofPennsylvania

DocketNumber: 1779CD2007

Page2of4

November20,2007



TRIALCOURT/AGENCYINFORMATION

CourtBelow: ClearfieldCountyCourtofCommonPleas

County: Clearfield

Division: Civil

DateofOrderAppealedFrom: August8,2007

JudicialDistrict: 46

DateDocumentsReceived: September20,2007

DateNoticeofAppealFiled:August28,2007

OrderType: Order

Judge: Ammerman,FredricJ.
PresidentJudge

LowerCourtDocketNo.: 2007-00701-CD

ORIGINALRECORDCONTENTS

BRIEFINGSCHEDULE

PACMSWebDocketSheet

Recententriesmadeintheappellatecourtfillingofficesmaynotbeimmediatelyreflectedonwebgenerateddocketsheets.

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oromissionsonthesewebdocketsheets.

CommonwealthDocketSheet

CommonwealthCourtofPennsylvania

DocketNumber: 1779CD2007

Page3of4

November20,2007



DOCKETENTRIES			
Filed Date	DocketEntry/DocumentName	PartyType	FiledBy
August28,2007	NoticeofAppealFiled	Appellant	Nole,JohnFrederick
September21,2007	SendBackforCorrection \$60.00orcompleted,signed,datedandreturnedIFPforms		CommonwealthCourtFilingOffice
September28,2007	CompliedwithSendback dated9/21/2007	Appellant	Nole,JohnFrederick
September28,2007	ApplicationtoProceedInFormaPauperis	Appellant	Nole,JohnFrederick
September28,2007	NoticeExited		CommonwealthCourtFilingOffice
October1,2007	OrderGrantingApplicationtoProceedInFormaPauperis		PerCuriam
November13,2007	LettertoTrialJudgeRegardingDelinquentRecord		Darlington,G.Ronald

PACMSWebDocketSheet

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oromissionsonthesewebdocketsheets.

2:38P.M.

CommonwealthDocketSheet

CommonwealthCourt of Pennsylvania

DocketNumber: 1779CD2007

Page4of4

November20,2007



REARGUMENT/RECONSIDERATION/REMITTAL

Reargument/ReconsiderationFiledDate:

ReargumentDisposition:

Date:

RecordRemitted:

PACMSWebDocketSheet

Recententriesmadeintheappellatecourt filing offices may not be immediately reflected on web generated docketsheets.

NeithertheAppellateCourtsnortheAdministrativeOfficeofPennsylvaniaCourtsassumesanyliabilityforinaccurateordelayeddata,errors
oromissionsonthesewebdocketsheets.

11/20/2007

5172

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102858
NO: 07-701-CD
SERVICE # 1 OF 4
COMPLAINT

PLAINTIFF: JOHN FREDERICK NOLE
vs.
DEFENDANT: GEORGE W. PATRICK al

SHERIFF RETURN

NOW, June 05, 2007 AT 11:10 AM SERVED THE WITHIN COMPLAINT ON GEORGE W. PATRICK, SUPERINTENDENT DEFENDANT AT SCI HOUTZDALE, PO BOX 1000, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DORETTA CHEMCHARICH, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED
0132139
OCT 17 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102858
NO: 07-701-CD
SERVICE # 2 OF 4
COMPLAINT

PLAINTIFF: JOHN FREDERICK NOLE
vs.
DEFENDANT: GEORGE W. PATRICK al

SHERIFF RETURN

NOW, June 05, 2007 AT 11:10 AM SERVED THE WITHIN COMPLAINT ON RANDALL E. BRITTON, FACILITY MGR. DEFENDANT AT SCI HOUTZDALE, PO BOX 1000, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DORETTA CHEMCHARICH, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102858
NO: 07-701-CD
SERVICE # 3 OF 4
COMPLAINT

PLAINTIFF: JOHN FREDERICK NOLE
vs.
DEFENDANT: GEORGE W. PATRICK al

SHERIFF RETURN

NOW, June 05, 2007 AT 11:10 AM SERVED THE WITHIN COMPLAINT ON FRAZER BLAKE, UNIT MGR. DEFENDANT AT SCI HOUTZDALE, PO BOX 1000, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DORETTA CHEMCHARICH, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102858
NO: 07-701-CD
SERVICE # 4 OF 4
COMPLAINT

PLAINTIFF: JOHN FREDERICK NOLE
vs.
DEFENDANT: GEORGE W. PATRICK al

SHERIFF RETURN

NOW, June 05, 2007 AT 11:10 AM SERVED THE WITHIN COMPLAINT ON JOHN BAILEY, COUNSELOR DEFENDANT AT SCI HOUTZDALE, BOX 1000, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DORETTA CHEMCHARICH, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102858
NO: 07-701-CD
SERVICES 4
COMPLAINT

PLAINTIFF: JOHN FREDERICK NOLE
vs.
DEFENDANT: GEORGE W. PATRICK al

SHERIFF RETURN

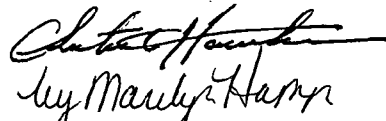
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOLE	M.O.	40.00
SHERIFF HAWKINS	NOLE	M.O.	60.00

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

FILED

OCT 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE SUPERIOR COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,

PLAINTIFF

V.

GEORGE W. PATRICK, et al

RESPONDENT

CIVIL ACTION NO.
2007-00701-CD

FILED No CC.
my 11:15 am
SEP 10 2007

HISTORY OF APPEAL PROCESS

William A. Shaw
Prothonotary/Clerk of Courts

Petitioner, John Frederick Nole, upon receiving an order from the Court of Common, denying is request for Preliminary Injunction Relief, the order issued on August 8, 2007. Petitioner filed a Notice of Appeal to the Commonwealth Court of said order.

On August 8, 2007 stamped date by the clerk on August 9, 2007, the court issued another order dismissing petitioner's Original and denying the filing of his Amended Complaint.

Petitioner file on August 16, 2007, A notice of Appeal to the Commonwealth Court, accompanied wit a Leave to Proceed in Forma Pauperis Status, along with a Verified Statement.

Petitioner again on August 27, 2007 filed a Leave to Proceed in Forma Pauperis to the Common Pleas Court, regarding the denial of his Original Complaint, and denial of his filing of his Amended Complaint.

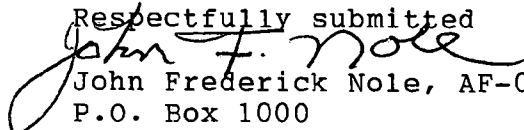
On August 30, 2007, the Common Pleas Court issued an order denying petitioner's request to Appeal in Forma Pauperis, referencing Preliminary Injunction Relief, and not regarding the Complaints, the original nor te amended.

Attached hereto is a Request to Proceed in Forma Pauperis, along with a Verified Statement, to Appeal the Denial of petitioner's

Original Complaint, and the denial of his Amended Complaint, to this Superior Court.

Petitioner will have this court note, all previous filings to the Commonwealth Court has gone unresponded to.

Respectfully submitted


John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

September 6, 2007

FILED

SEP 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE SUPERIOR COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,

PLAINTIFF

V.

GEORGE W. PATRICK, et al

RESPONDENT

CIVIL ACTION NO.
2007-00701-CD

FILED No CC.
0/11:15 Lm
SEP 10 2007

APPLICATION IN LEAVE TO APPEAL IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 553

William A. Shaw
Prothonotary/Clerk of Courts

Appellant, John Frederick Nole, hereby request leave to appeal this matter to this Court in Forma Pauperis and in support thereof states the following:

On August 16, 2007, appellant filed a Notice of Appeal in the Court of Common Pleas of Clearfield county, appealing that court's order of August 8, 2007, sustaining the preliminary objections of the Respondents, and dismissing appellant original complaint and denying his Amended Complaint.

2. On August 30, 2007, Court of Common Pleas of Clearfield County denied appellant's application for leave to appeal in forma pauperis pursuant to Pa. R.A.P. 552(b); a copy of the order is attached hereto as Exhibit "A".

3. Appellant, John Frederick Nole, does not have sufficient available resources to pay the cost of proceeding with this appeal in this court, as shown on the IFP Verified Statement (Pursuant to Rule 561) attached hereto as Exhibit "B".

WHEREFORE, appellant requests this Court to grant his leave to appeal this matter to this Court in forma pauperis.

Respectfully submitted

John F. Nole
John Frederick Nole
P.O. Box 1000

Houtzdale, Pa. 16698-1000

IN THE SUPERIOR COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,

PLAINTIFF

v.

GEORGE W. PATRICK, et al

RESPONDENT

CIVIL ACTION NO.
2007-00701-CD


PROOF OF SERVICE

I, the undersigned, hereby certify that a copy of The Notice of Appeal denying Inform Pauper of Plaintiff's Original and Amended Complaint, was served upon the person(s) in the Common Pleas Court, in the manner indicated below:

Service by first class mail

Prothonotary/Clerk of Court
Clearfield County Courthouse
P.O. Box 549
Clearfield, Pa. 16830

Respectfully submitted


John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16898-1000

DATE: September 6, 2007

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, et al
Defendants

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No. 07-701-CD

ORDER

NOW, this 29th day of August, 2007, the Court being in receipt of the Plaintiff's *pro se* Application to Proceed in *forma pauperis* relative his appeal to the appellate court due to this Court dismissing his demand for an injunction; the Court believing the matter to be frivolous, it is the ORDER of this Court that the Plaintiff's request to proceed in *forma pauperis* be and is hereby DENIED.

BY THE COURT,

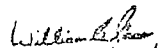
/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 30 2007

Attest.


Prothonotary/
Clerk of Courts

FILED

SEP 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

CP

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, et al
Defendants

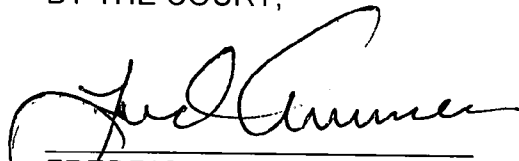
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No. 07-701-CD

ORDER

NOW, this 29th day of August, 2007, the Court being in receipt of the Plaintiff's *pro se* Application to Proceed in *forma pauperis* relative his appeal to the appellate court due to this Court dismissing his demand for an injunction; the Court believing the matter to be frivolous, it is the ORDER of this Court that the Plaintiff's request to proceed in *forma pauperis* be and is hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 3cc
01/10/25/07 Piff
AUG 30 2007 (CR)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION

No. 2007-00701-CD

ICC with 8/29/07
JFP Order to
Commonwealth
Court 9/18/07

NOTICE OF APPEAL

NOW COMES, Petitioner in this instant matter, giving Notice of Appeal in the above caption matter. Petitioner is seeking redress of the order of Judge Frederic Ammerman, denying The Complaint of Petitioner on August 8, 2007.

Attached hereto is the order of such denial.

Respectfully submitted,

John Frederick Nole
John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE:

Aug. 16, 2007

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

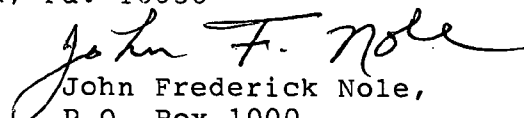
PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing documents, **Notice of Appeal**, from the Denial of Petitioner's Complaint was served upon the person(s) in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 1514(c).

Certified Mail; Postage Pre-Paid; Return Receipt Requested;
addressed as follows:

Michael J. McGovern
Assistant Counsel
Pa. Department of Correction
55 Utley Drive
Camp Hill, Pa. 17011

Judge Fredric J. Ammerman
William A. Shaw,
Prothonotary/Clerk
Clearfield County Courthouse
P.O. Box 549
Clerkfield, Pa. 16830


John Frederick Nole,
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATED: August 16, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

FILED

JOHN FREDERICK NOLE,
Petitioner
vs.

GEROGE W PATRICK, et al
Defendants

CIVIL ACTION

No. 2007-00701-CD

AUG 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

PLFF

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 552(b)

Plaintiff/appellant, Jonh Frederick Nole, hereby request leave to appeal this matter to the Commonwealth/Superior of Pennsylvania in forma pauperis and in support thereof, states the following:

1. On August 8, 2007, this court entered an order sustaining the Preliminary objections of Respondents-appellees, Department of Corrections, and dismissing the complaint of plaintiff.
2. On August 16, 2007, plaintiff-appellant filed a Notice of Appeal to the Commonwealth of Pennsylvania.
3. Plaintiff-appellant, John Frederick Nole, is indigent, and has not means of paying the cost for further pursuit of his legal claims.

WHEREFORE, Plaintiff-appellant, John Frederick Nole, request this Court to enter an order pursuant to Pa. R.A.P. 552(b) granting his application for leave to appeal in forma pauperis.

Respectfully submitted,

John F. Nole
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

DATE: August 27, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

JOHN FREDERICK NOLE,
Petitioner

vs.

GEROGE W PATRICK, et al
Defendants

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CIVIL ACTION

No. 2007-00701-CD

APPLICATION FOR LEAVE IN FORMA PAUPERIS
PURSUANT TO PA. R.A.P. 552(b)

IN FORMA PAUPERIS VERIFIED STATEMENT

I John Frederick Nole, state under the penalties provided by 18 Pa. C.S. § 4908 (unsworn falsification to authorities) that:

1. I am the plaintiff in the above action and because of my financial condition am unable to pay the following fees and costs: Appellate filing fees, costs of reproducing records or briefs, and irreparable harm would result if not waived.

2. My response to the questions below relating to my ability to pay the fees and costs of prosecuting an appeal are true and correct.

(a) Are you employed? Yes: Prison inmate employment

(b) Have you received within the past twelve months any income from a business, profession, or other forms of self employment, or in the form of rent payments, interest, dividends, pensions, annuities, social security benefits, support payments or other source? No.

Do you own any cash, checking or savings account? No.

Do you own any real estate, stocks bonds, notes, automobiles, or other valuable property? No.

There are no person(s) who are dependent upon me for support.

I don't have any debt that I am aware of this time.

3. I understand that a false statement or answer to any questions in this verified statement will subject me to the penalties provided by law.

Aug. 27, 2007

Respectfully submitted,

John Frederick Nole
John Frederick Nole, AF-0346

FILED

AUG 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN SENATE
JANUARY 12, 1907
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1896
AND
A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1896

ALBANY:
J.B. LEECH, PRINTERS
1907

THE LAND OFFICE
OF THE STATE OF NEW YORK
ALBANY
J.B. LEECH, PRINTERS
1907

ALBANY:
J.B. LEECH, PRINTERS
1907

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J.B. LEECH, PRINTERS
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J.B. LEECH, PRINTERS
1907

ALBANY:
J.B. LEECH, PRINTERS
1907

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOHN FREDERICK NOLE,
Petitioner
vs.

GEROGE W PATRICK, et al
Defendants

FILED

AUG 23 2007

William A. Shaw
Prothonotary/Clerk of Courts
2 CENT : to Clerk

CIVIL ACTION

No. 2007-00701

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA
17 AUG 2007 08 29

APPLICATION TO PROCEED IN FORMA PAUPERIS

I, John Frederick Nole, declare that I am the plaintiff in the above entitled proceeding; that in support of my request to proceed without being required to pre-pay fee, cost or give security thereof, I state that because of my poverty, I am unable to pay the cost of said proceedings or give security. Therefore, I believe I am entitled to relief.

In further support of this application: I certify the following: I am employed: 1. (A) My wages are approximately \$60.00 per month through a prison compensation program. 2. In the past six months I have received small gifts from friends and family to support the necessities I require for physical maintenance on the average of \$30.00. 3. I have no checking accounts. I have approximately \$25.00 in my inmate prison account. 4. I do not have nor do I own any property, Stocks, Bonds, notes, automobiles or other valuable property. 5. There are no individuals who rely on me for support.

I declare under penalty of perjury, that the foregoing is true and correct.

DATE: August 16, 2007

Respectfully Submitted
John F. Nole
John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale Pa. 16698-1000

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

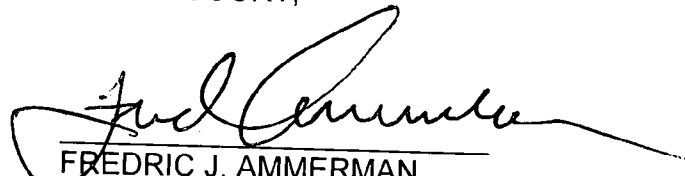
GEORGE W. PATRICK, RENDALL BRITON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

NO. 07-701-CD

ORDER

NOW, this 8th day of August, 2007, the Court being in receipt of the Plaintiff's pro se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or precedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 1CC Piff-
08/21/07 AF 03410
AUG 08 2007 SCI Hutzdale
William A. Shaw
Prothonotary/Clerk of Courts 1CC Atty McGovern

(610)

(11)

FILED

AUG 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/8/07

 You are responsible for serving all appropriate parties.

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

 X Plaintiff(s)

 Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

LA

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

GEORGE W. PATRICK, RANDALL BRITTON,
FRAZER BLAKE, JOHN BAILEY,
Defendants

NO. 07-701-CD

FILED

019:07/01
AUG 09 2007

With memo:
ICC Piff
AF 0346
SCI Houtzdale
Att. McGovern

OPINION

William A. Shaw Without memo:
Prothonotary/Clerk of Courts Law Library
D. M. Kesell

Plaintiff John Frederick Nole ("Nole") is an inmate confined at the State Correctional Institution ("SCI") at Houtzdale. He is serving a life sentence. Defendants are all employees of the PA. Department of Corrections ("DOC") who are assigned to SCI-Houtzdale.

Nole alleges that from March 31, 1971, until September 30, 2003, he was housed in cells without a cellmate. This is apparently referred to as single cell status. On or about December 12, 2006, Nole requested through Defendant Frazer Blake that he be evaluated for single cell status. Both Blake and Defendant Randall Britton informed Nole that he did not qualify for single cell status. Nole appealed this decision to Defendant George Patrick, the Superintendent of SCI-Houtzdale, who never responded in writing to his appeal. On December 26, 2006, Defendant John Bailey informed Nole that his request for Z-Code status had been denied because he did not fit the criteria. Bailey told Nole that his request was denied because Nole had tried to manipulate a Z-Code by placing forged documents in a counselor's file while he was confined at SCI-Greene. Z-Code is used to designate inmates who do not meet the criteria for double or multiple celling, and therefore require single celling due to medical needs, mental health

problems, victimization concerns, or assaultive facility behavior. Nole appealed this decision within the prison and the appeal was denied.

Nole filed a complaint with this Court on May 11, 2007 alleging that the Defendants recklessly, carelessly and negligently placed his life in danger and promoted violence, mental anguish, and a breakdown in safety for the express purpose of breeding volatile circumstances in direct violation of DOC policies for involuntary double celling. He further alleges he is in danger of being assaulted and is being retaliated against. He alleges that the Defendants' actions violate 18 Pa. C.S. §§ 2703, 22704 and 2705 and have discriminated against him by allowing individuals who have been incarcerated for less time than he has and who do not have Z-Code status to have single cells. The Defendants filed Preliminary Objections to the Complaint on July 2, 2007. Under Pa. R.C.P. 1028(c)(1) Nole had the right to file an amended complaint within 20 days after service of the Preliminary Objections. Nole was served with the Preliminary Objections by no later than July 3, 2007. This is the date on the Motion to Amend Complaint he caused to be filed on July 6, 2007 wherein he references the Preliminary Objections. As Nole had the right under Rule 1028 to file an Amended Complaint and no court permission was necessary, the Court did not issue a ruling on the Motion to Amend. In July 10, 2007 the Court issued a briefing schedule on the Defendants' Preliminary Objections. The Defendants' brief was received on August 2, 2007. Nole did not submit a brief. Instead, Nole filed an Amended Complaint on July 30, 2007, outside the required 20 day limit.¹ Therefore, the Court will rule on the Defendants' Preliminary Objections to the original Complaint.

¹ Nole received the Preliminary Objections no later than July 3, 2007. His Amended Complaint is dated July 27, 2007. Even assuming Nole had delivered his Amended Complaint to the prison mailbox on July 27, 2007 he still did not meet the 20 day deadline.

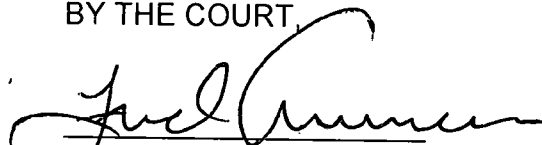
This Court has reviewed the statements of law and precedent set forth in the Defendants' Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein.

Finally, this Court does not believe it will serve any legitimate legal purpose to permit amendment of the Complaint by Nole. Nor is this Court aware of any "seniority" policy or rule which entitles a longer serving inmate to a single cell as opposed to an inmate with a shorter sentence.

ORDER

NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

AUG 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/9/07

☐ You are responsible for serving all appropriate parties.

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

☒ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

FILED

AUG 07 2007

W. William A. Shaw
Prothonotary Clerk of Courts
2 CENT.

JOHN FREDERICK NOLE,
Plaintiff

CIVIL ACTION-LAW

Vs.

No. 2007-00701-C.D.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

MOTION TO MOOT PREVIOUS FILINGS

Petitioner in the above caption matter, comes now before the Honorable, COURT, compelling it, to moot all previous filing by the Defendant's Attorney, and to respond to the Amended Complaint filed in this instant matter, on July 27, 2007.

Petitioner raises in support of this motion Pa. Rules of Court 1033.

Petitioner upon receiving defendants Preliminary Objections, dated June 29, 2007, filed A Motion to Amend his complaint, on July 3, 2007, thus compelling defendants to respond to the Amended Complaint, and thus mooting the original Preliminary Objection.

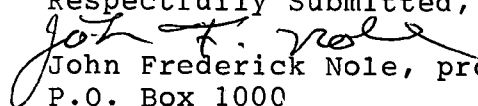
The Court, ignoring petitioner's request to file an Amended Complaint, issued an order on July 10, 2007, compelling the filing of briefs to The Preliminary Objections.

Petitioner requesting an official order from the court granting his motion to Amend and upon receiving none, filed an Amended Copy of his complaint, after proper notice to Defendants, on July 27, 2007, along with a Motion for a Preliminary Injunction to have the Defendants cease the Random and Arbitrary Double Celling of individuals without a Compatibility Assessment, which

creates a Reckless and Dangerous living environment.

Petitioner upon receiving, a brief in support of Defendants' Preliminary Objection, petitioner is compelled to file a Motion to compel the court to issues an order to moot all previous filings with the court, on the part of the Defendants, and respond directly to the pleadings in petitioner's Amended Complaint, as provided under Rules of Civil Procedures for Amended Filings.

Respectfully Submitted,


John Frederick Nole, pro se
P.O. Box 1000
Houtzdale, Pa. 16698-1000

DATE: Aug. 6, 2007

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

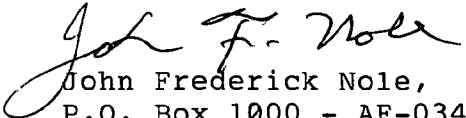
JOHN FREDERICK NOLE,	:	CIVIL ACTION-LAW
Plaintiff	:	
	:	
Vs.	:	No. 2007-00701-C.D.
	:	
GEORGE W. PATRICK,	:	
RENDALL BRITTON	:	
FRAZER BLAKE	:	
JOHN BAILEY	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby Certify that a true and correct copy of the foregoing Motion to Moot **ALL PREVIOUS FILINGS**, were served upon the below listed individual, Attorney for the Defendants', in tha Caption matter, by First Class Mail, Postage pre-paid on August 6, 2007.

Michael J. McGovern
Attorney
Department of Corrections
55 Utley Drive
Camp Hill, Pa. 17011

DATE: August 6, 2007


John Frederick Nole,
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

FILED

AUG 07 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 30 2007

m/12:05/4
William A. Shaw
Prothonotary/Clerk of Courts

2 cert copy

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE
PLAINTIFF

VS.

GEORGE W. PATRICK
RENDALL BRITON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

CIVIL ACTION -LAW

No. 2007-00701-CD

CERTIFICATE OF SERVICE

I hereby Certify that a true and correct copy of the fore-
going **Motion for Injunction Relief** were served upon the below
listed individual, Attorney for the Defendants' in the Caption
matter, by First Class Mail, Postage Pre-Paid on:

This 27 day of July 2007

Michael J. McGovern
Department of Corrections
55 Utley Drive
Camp Hill, Pa. 17001

DATE:

July 27, 2007

John F. Nole
John Frederick Nole
P.O. Box 1000 - AF-0346
Houtzdale, pa. 16698-1000

FILED

JUL 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 2007-00701-C.D.

FILED

JUL 30 2007

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William A. Shaw

Prothonotary/Clerk of Courts

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff submits this motion for a preliminary injunction.

In determining whether a preliminary injunction should be issued, a court must consider whether the party seeking the injunction has demonstrated that: (1) it has a reasonable likelihood of success of the merits of the underlying claim; (2) no adequate remedy at law exist; (3) it will suffer irreparable harm if the preliminary injunction is denied; (4) the irreparable harm the party will suffer without injunctive relief is greater than the harm the opposing party will suffer if the preliminary injunction is granted; and (5) the preliminary injunction will not harm the public interest.

I. THERE IS A REASONABLE LIKELIHOOD THAT PLAINTIFF WILL SUCCEED ON THE MERITS IN THIS CASE.

Pursuant to State Rules of Civil Procedures. Special Relief Injunction 1531: (a) A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining

whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleading or petition and may consider affidavits of parties or third person or any other proof which the court may require.

Plaintiff in this instance matter, request the court issue an injunction that compels the Houtzdale Administration, to implement compatibility procedure for celling inmates together at their institution. That they be compelled to develop a program that can try and predict whether incoming inmates and their cellmate will be compatible. Also that the Houtzdale Institution cease from celling any inmates together based on random cell space availability alone.

That the Houtzdale Institution be compelled to implement a single cell criteria separate and distinct from Z-Code, as required by the D.O.C. under their **"A" Code Policy - for lifers' and long term offenders'**.

Plaintiff request that SCI-Houtzdale Administrator, be compelled to cease from randomly celling life sentenced prisoners together and compelling them to be disproportionately subjected to penalties of law, where violence may erupt due to incompatibility of randomly double celling inmates together.

Plaintiff is submitting Affidavits to support his contention that administrators' at SCI-Houtzdale practices the Endangerment and Reckless Endangerment of prisoners' lives through random

double celling, without a compatible double celling policies.

Respectfully submitted,

John F. Nole
John Frederick Nole

P.O. Box 1000

Houtzdale, Pa. 16698-1000

DATE: July 21, 2007

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I Adolph H. Johnson, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to random double celling and the celling of incompatible individuals at the SCI- Houtzdale.

Under Houtzdale, random double celling, based solely on the availability of space, I have been compelled to cell with individuals where the incompatibility in our habits, and life style promoted a conflict, which the institution's administrators were aware of. The suspension of compatibility schemes, and random double cellings has subjected me to conflicts in religious, and social differences, and created a potential for a violent living environment.

DATE: 4-10-07

Respectfully Submitted

Adolph H. Johnson ELH530
Name and Number

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I Glenn Lertel, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to unsworn falsification to authorities.

Under random double celling, and the lack of a compatibility program, the Houtzdale Administration has foster a failure to protect by failing to adequately screen inmates who have a potential for stealing and disregarding their cellmates personal property, thus creating an environment that promotes violence. I have personally informed Unit Manager Blake, of incidents where inmates he has randomly celled with me, have used my personal property without permission, and he has refused to have them moved, and because we have noting in common other than being a prisoners.

The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are incompatible causing a conflict, which has resulted in mental and emotional stress, and has been a breeding ground for a violent atmosphere.

DATE: 7/10/07

Respectfully submitted,

Glenn Lertel GD-9862

Name and Number

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I RAYMOND HOUSTON, the under sign, who hereby swear upon
NAME
my oath, now deposes and says, the forgoing is true and correct
to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above,
and I understand that if I use any false statements in this affi-
davit, they are subject to the penalties of perjury as in 18 Pa.
C.S.A. Section 4904, relating to unsworn falsification to
authorities.

The forgoing information is based solely upon mu own person-
al experiences, as it relates to random double celling and the
celling of incompatible individuals at the SCI- Houtzdale.

Under Houtzdale's random double celling, I have been placed
in living situations where the institution knew the person they
were celling wit me had committed violence upon other inmates
he celled with, and showed no regards for my safety.

Because Houtzdale fails to use the Department of Corrections,
(D.O.C.) compatability directives, I have endured many incompat-
ible difference, where the person I was locking with, posed a
danger to my safety and well being, and violated my personal
property, creating a hostel and violent atmosphere.

DATE: 6-29-07

Respectfully Submitted,

Raymond Houston EV 4728
NAME AND NUMBER

COMMONWEALTH OF PENNSYLVANIA

IN THE COUNTY OF CLEARFIELD

:
:
: Civil Action:
No. 2007-00701-CD

AFFIDAVIT

I CHARLES BAENIG, the under sign, who hereby swear upon my oath, now deposes and says, the forgoing is true and correct to the very best of my own knowledge, information and belief.

The contents of this Affidavit, is by myself as stated above, and I understand that if I use any false statements in this affidavit, they are subject to the penalties of perjury as in 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

The forgoing information is based solely upon my own personal experiences, as it relates to unsworn falsification to authorities.

Under random double celling, and the lack of a compatibility program, the Houtzdale Administration has foster a failure to protect by not screening inmates who have a potential for violence and have noting in common other than being a prisoners.

The Houtzdale Administration has repeatedly forced individuals to cell together merely based on space availability. I have been subjected to celling with individuals who are known smokers, on non-smoking blocks, causing a conflict of mental and emotional stress, and breeding a violent atmosphere.

DATE: JULY 12, 2007

Respectfully submitted,

Charles Baenig FT2206
Name and Number

FILED

JUL 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 2007-00701-C.D.

FILED

JUL 30 2007

11:50/2

William A. Shaw
Prothonotary/Clerk of Courts
2 cert COPY

PROOF OF SERVICE

I, John Frederick Nole, hereby certify that I have served
the foregoing Proof of Service along with the AMENDED COMPLAINT,
upon the party listed below:
on, July 27, 2007, this being pursuant to the State Rules of
Civil Procedures, and in the manner listed below, which service
satisfies the requirements of the Pennsylvania State Rules of
Civil Procedures.

SERVICE BY FIRST CLASS MAIL, POSTAGE PRE-PAID.

ASSISTANT COUNSEL
Michael J. McGovern
Pa. Department of Corrections
55 utley Drive
Camp Hill, Pa. 17011

Attorney for the Defendants in this instant matter.

Respectfully submitted,

John F. Nole
John Frederick Nole
P.O. box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

FILED

JUL 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON LEAS
CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE
PLAINTIFF

Vs.

GEORGE W. PARTICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY
DEFENDANTS

: CIVIL ACTION-LAW
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No. 2007-00701-CD

FILED

JUL 30 2007

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William A. Shaw
Prothonotary/Clerk of Courts
2 CNT COPY

AMENDED COMPLAINT

AND NOW, comes the Plaintiff John Frederick Nole, a prisoner proceeding pro se and files the following **AMENDED COMPLAINT**:

1. Plaintiff, John Frederick Nole, is an adult individual residing at SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000 in Clearfield County, who is the injured party in this cause for complaint.
2. George W. Patrick, is the Superintendent of the Houtzdale Facility, P.O. Box 1000, Houtzdale, Pa. 16698-1000.
3. Randall E. Britton, is the Facility Manager of the Houtzdale Facility, at P.O. Box 1000, Houtzdale, Pa. 16698-1000.
4. Frazer Blake, is a Unit Manager at the SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000
5. John Bailey, is a Counselor at SCI- Houtzdale, P.O. Box 1000 Houtzdale, pa. 16698-1000.
6. On March 31, 1971, Plaintiff John Frederick Nole, entered the then Bureau of Coorection, and has been incarcerated consistently since that time, in the Department of Corrections, (D.O.C.) for the past 36 years.
7. Plaintiff has been single cell since his incarceration, until he entered SCI-Houtzdale, September 30, 2003, where was randomly double cell in the Restricted Housing Unit, (R.H.U., and his life, due to random double celling without a compatibility scheme was placed in danger by the reckless and arbitrary suspension of D.O.C. rules and policies on compatibility, by the defendants.
8. The Defendants mentioned herein have engaged in unlawful,

arbitrary, and bias practices of D.O.C. rules, regulations, and policies against plaintiff.

9. Plaintiff on December 12, 2006, requested through Defendant Blake, to be evaluated for a single cell, and was refused, by both he and defendant Britton, stating, "Plaintiff did not qualify" **SEE: Exhibit "A" thru "A-3"**.

10. As a result of their refusal, plaintiff made an appeal to Defendant Patrick, who never responded writtenly, nor anyone in his stead. **SEE: Exhibit "B"**.

11. Plaintiff, shortly thereafter was called into defendant Bailey's office, and was told, "While he would like to give plaintiff a single cell, he would not recommend a Z-Code".

12. Plaintiff requested that Mr. Bailey document these statements, and record plaintiff concerns for his safety and well being in a double cell situation of a randomly housed individual, and that he be recommended to see the psychiatrist, defendant denied both request.

13. Plaintiff, on or about December 26, 2006, was summoned again to Defendant Bailey's Office, and was told his request for a Z-Code Status was denied, because he did not fit the criteria.

14. Defendant Bailey denied plaintiff upon requested, for a copy of all documentation of said denial and those who participated in the decision making. Plaintiff was denied this request, but was told by defendant Bailey, he was denied because he tried to manipulate a Z-Code, by placing forged documents in a counselor's file, while confined at SCI-Greene County Prison.

15. Plaintiff grievanced single cell denial, and was refused the processing of the grievance by the coordinator thru Defendant Patrick's office. **SEE: Exhibit C-1 thru C-7"**.

16. Plaintiff made a direct appeal to Defendant Patrick, and it was denied by the Defendant.

17. Plaintiff made an appeal to the Chief Grievance Secretary at Central office, and was denied the appeal. **SEE: Exhibit C-1 thru C-7.**

COUNT I- RECKLESS ENDANGERMENT

PLAINTIFF, JOHN FREDERICK NOLE, VS. DEFENDANTS GEORGE PATRICK,

RANDELL BRITTON, FRAZER BLAKE AND JOHN BAILEY.

18. Plaintiff incorporates paragraph 1 thru 17 by reference as if set forth in length.

19. Plaintiff avers that the reckless, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, has consistently placed plaintiff's life in peril, in retaliation for his involuntary and random double celling. **SEE: Exhibits D-2 Sec.**

C-1. A-M 2.

20. Plaintiff avers that the policies and practices of the defendants have been used as punishment, because the defendants have routinely suspended Administrative Policies on Compatibility Schemes, for those who involuntarily and are randomly double celled together. Defendants have created an arbitrary housing policy that promotes, and subjects plaintiff to violent attacks, creates mental and emotional anguish, negligence and eliminates safety requirements, that would otherwise reasonably protect plaintiff in an involuntary random double celling environment. **SEE: D-3 VI Procedure.**

21. Plaintiff avers, the reckless and negligence by randomly celling inmates together, Defendants Patrick, Britton, Blake and Bailey, uses against plaintiff his involuntary double celling, to violate D.O.C. policies - thus placing: **Young with old, Smokers with non Smokers, Muslims with Christians, Educated with Uneducated; Violent offenders with non-violent offenders, diseased with the healthy, ect.,** creating a heightened recklessness for violence and subjecting plaintiff to harm because he complains and objects to being double celled.

22. Defendants in direct violation of D.O.C. Policies, on involuntary double celling, have subjected plaintiff to retaliatory treatment. **SEE: Exhibit D-2 "V thru C"**

23. Plaintiff avers, that defendant Bailey, deliberately refused during various interviews and evaluation processes, to document plaintiff's statement of fear for his safety in a double cell, and refused to investigate said statements or recommend other appropriate treatment or resources.

24. Plaintiff states, the defendant Bailey failed to place in plaintiff's record the mental and emotional anxiety plaintiff

exhibited during interviews and statements of fear that he had been victimized and feared that he may have it happen again thru random double celling. **SEE: Exhibit C-2**

25. Plaintiff states, defendant Blake, consistently ignoring plaintiff's request for single housing, used his involuntary double celling against him, to create reckless and dangerous living circumstances, by suspending compatibility procedures, and randomly celling plaintiff, creating emotion and mental anguish to plaintiff.

26. Defendant Blake, over the course of 6 to 8 months deliberately moved inmates in and out of plaintiff cell without a compatibility scheme, because plaintiff refused to voluntarily double cell and complained of random cell assignments, based solely on cell availability. **SEE: Exhibit D-1 thru D-4.**

27. As a direct and proximate result of the aforesaid acts of negligence, recklessness, and retaliatory practices, plaintiff was compelled to file numerous complaints to both the institution administration and Central Headquarters. Plaintiff was compelled to have family write letters on his behalf, expressing their concern for plaintiff's safety, and the mental anguish they were experiencing because of previous occasions when plaintiff had been assaulted during his confinement. Plaintiff is now being retaliated against and further threatened by Defendants Patrick, Britton and Blake.

28. Plaintiff avers, defendant Patrick, Britton, and Blake, only after plaintiff filed grievances and had family intervene on his behalf, was retaliated against and moved from his housing unit by defendants Blake, Britton and Patrick, where he was subject to continued random housing, without a penal-logical objective, other than plaintiff's request for single cell status.

SEE: Exhibit E-1 thru E-3; F-1 thru F-3 and G-1 thru G-2.

29. Plaintiff states, that he's been arbitrarily disenfranchised from single celling policies, and discriminated against by the defendants, Patrick, Britton, Blake and Bailey, because of his longevity of confinement, non-violent behavior, and his questioning his removal and disqualification from single cell policies.

SEE: Exhibit "H".

30. Plaintiff states, defendants' Patrick, Britton, Blake and Bailey, because of arbitrary suspension of D.O.C. policies they have created against plaintiff, unsanitary living environments, because he involuntarily double cells, and defendants have created undue stress by placing him in incompatible living environments that foster violence and physical attacks against plaintiff.

31. The reckless, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, consisted, Inter Alia, of the following:

- A. engaging in un-authorized practices forbidden by the Department of Correction, (D.O.C.) policies and directives.
- B. failing to adhere to safety and sanitary protocols, as established by the D.O.C. policies and directive for double celling.
- C. operating a facility where their policies and practices promote violence against incompatible double celling inmates.
- D. failing to establish a mandated criteria for single celling of life sentence and long term prisoners', as directed by the D.O.C.
- E. failing to comply with policies and procedures required for individuals that involuntarily double cell, because it places lives in danger and promotes violent behavior.
- F. such other acts or omission as may be revealed in the course of discovery, or at trial of this case. **SEE:**

Exhibit D-1 thru D-4.

32. Plaintiff states, defendants, Patrick, Britton and Blake choose to maintain hazardous overcrowded condition, for the expressed purpose of randomly celling inmates together based on cell space only, and to avoid implementing D.O.C.'s philosophical opposition to double celling, by deliberately avoiding the creation of a non-Z-Code single cell policy, and thus, purposefully placing plaintiff's life in danger of serious bodily harm, and forcing him under threats and retaliation to remain in an

involuntary double celling, on permanent basis, because he grievances he filed, and had his family interence on his behalf.

SEE: Exhibit E-1 thru G-2.

33. Plaintiff states, the defendants, Patrick, Britton and Blake, have compelled plaintiff to consistenly be confined in double occupancy without the benefit of screening, interview, or evaluation for appropriate housing, under criteria(s) for single celling, because he objects to double celling. **SEE: Exhibit "J".**

34. Plaintiff states the the defendants, Patrick, Britton, Blake, and Bailey, failed to review plaintiff vulnerability to being a victim of assaults and attacks by other prisoners, and deliberately subject him to harm, where incompatible housing schemes are triggers for violence and attacks.

35. Plaintiff avers, that the defendants, Patrick, Britton and Blake, arbitrarily provides single celling to inmates without Z-Codes, through an arbitrary suspension of non-Z-Code single celling criteria, that would include plaintiff. Plaintiff has been retaliated against and excluded from single celling because he filed grievances against his in-voluntary double and random celling. **SEE: Exhibit "J".**

35. Plaintiff avers, that all the actions and policies aforementioned employed by the defendants, Patrick, Blake, Britton, and Bailey, violates Statutes **18 Pa. C.A.S. §2795 Reckless Endangering another person, by capriciously suspending protective safety compatibility schemes**, and randomly celling individuals, which promotes violence against plaintiff.

36. Plaintiff avers, that the suspension of D.O.C. policies on compatibility schemes by Patrick, Britton, and Blake, has allowed **18 Pa. C.A.S. §2703 and §2704 Assault by a Prisoner, and Assault by a Life Sentenced Prisoner** to be disproportionately, arbitrarily and vindictively applied against him thru their policy of randomly double celling, because he's refused to voluntarily double cell without proper screening and evaluation procedures that are required under D.O.C. policies, which defedants have ignored and suspended, acting in a retaliatory manner against plaintiff. **SEE: Exhiit "I"**

37. Plaintiff avers, that because defendants, Patrick, Britton

and Blake, chooses to maintain dangerously over-crowded conditions, and have suspended double celling safety schemes, they've created for plaintiff, because of his refusal to voluntarily double cell, hostile and agitated environments are manifested by celling arbitrarily and randomly assigning individuals to cells, which fails to meet the requirements for safety as established by the D.O.C.

38. Plaintiff states, the defendants, Patrick, Britton, and Blake, discriminated against him, insofar as, they've allowed single housing of individuals without Z-Codes, and with significant less time of total confinement than plaintiff's thirty seven years (37), and in retaliation because he grieved his double celling, defendants have voided his grandfather status forbidding the losing of things and privileges previously allowed by the D.O.C., including single cell living status.

SEE: Exhibis B-1 thru I.

39. Due to the defedants' actions, they've violated the aforementioned statues' acting under color of law, and they've caused plaintiff to be subject to bodily harm. They've discriminated against him, and on more than one occassion, have employed arbitrary practices, that caused him to suffer continued mental and emotional anguish. The defendnts' have overly punished plaintiff through disenfranchising him because of the significant amount of time he's spent in and under total confinement, by allowing newly established procedures to be applied retroactively, and invading ^{living} ~~statutory~~ accomplishments made. Defendants have taken away previously established rules and policies held by plaintiff, without a penal-logical objective.

WHEREFORE, Plaintiff, John Frederick Nole, demands Judgment against the Defendants' George, W. Patrick, Rendell Britton, Frazer Blake, and John Bailey, in the amount in excess of Five Thousand Dollars, (\$5,000.00), and any other such negotiated terms deemed appropriate for settlement of damages done to plaintiff by the defendants' in this instant matter.

DATE: July 27, 2007

John Frederick Nole
John Frederick Nole, pro se
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

EXHIBITS
A THRU J

Exhibit "A" - 1

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) Mr. Blake, unit Manager		2. Date: December 12, 2006	
3. By: (Print Inmate Name and Number) John Frederick Nole, AF-0346 John F. Nole Inmate Signature		4. Counselor's Name Mr. Bailey	
		5. Unit Manager's Name Mr. Blake	
6. Work Assignment ADD Peer Educator		7. Housing Assignment FB #43	
8. Subject: State your request completely but briefly. Give details. Mr. Blake: I would like to speak with you about re-visiting my request for my Z-Code, at your convenience.			
Sincerely, John F. Nole John F. Nole			
9. Response: (This Section for Staff Response Only) MR NOLE, I spoke with MR Bailey and Deputy Britton and you do not qualify for single cell status. CC: John Bailey Deputy Britton			
To DC-14 CAR only <input type="checkbox"/>		To DC-14 CAR and DC-15 IRS <input type="checkbox"/>	

Staff Member Name

BLAKE
Print

John F. Nole
Sign

Date

12/12/06

DATE:
SUBJECT:
TO:

12/13/06
Grievance Rejection Form

John Nole AF0346

Mo. Chenchavich

FB-43

FROM:

Facility Grievance Coordinator

FOR OFFICIAL USE ONLY

172403
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. X _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each **15** working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously **in grievance no.** _____ **dated** _____.

*You have provided nothing to substantiate
the need for Z code status.*

FOR OFFICIAL USE ONLY
172403
GRIEVANCE NUMBER

TO: FACILITY GRIEVANCE COORDINATOR Ms. Doretta Chencherick		FACILITY: SCI-HOUTZDALE	DATE: 12-12-06
FROM: (INMATE NAME & NUMBER) John F. Nole, AF-0346		SIGNATURE of INMATE: <i>John F. Nole</i>	RECEIVED SUPT'S ASST OFF
WORK ASSIGNMENT: ADD Peer Education		HOUSING ASSIGNMENT: FB 43	
INSTRUCTIONS: 1. Refer to the DC-ADM 804 for procedures on the inmate grievance system. 2. State your grievance in Block A in a brief and understandable manner 3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.			DEC 13 2006 SCI - HOUTZDALE PO BOX 1000 HOUTZDALE, PA
A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804 Part 1 form and one, one-sided 8 1/2" x 11" page). I've requested to be formally evaluated for Z-Code celling through my unit Manager. This request was arbitrarily, stating in writing I did not qualify for the evaluation, and/or single celling. Without being provided a proper evaluation by those who are better able to address my psychological and emotional concerns, for both my safety and overall welling being. I believe the denial of my request to be evaluated for single living is a deliberate indifference, to my life being putting in jeopardy, under present circumstances. I have spoken with my counselor, and was advised to speak with my Unit Manager - I wrote him and was denied both an the opportunity to speak with him, and to be recommended to speak with a mental health and/or clinical personnel..			
B. List actions taken and staff you have contacted, before submitting this grievance. Spoke to my counsel and wrote to my Unit Manager to try and resolve this issue.			

Date _____

A-3

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172403
12/13/06 & Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0346

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluate was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, smotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CC: File (3)

Exhibit "B"

December 14, 2006

SUBJECT: GRIEVANCE DENIAL #172403
12/13/06 & Evaluation Denial

TO : GEORGE PATRICK, SUPT.

FROM : *John F. Nole*
John Frederick Nole, AF-0348

Supt. Patrick:

Upon receiving my Classification Status, I made a formal request to my Unit Manager, to be evaluated for single housing under a Z-Code. My request to be evaluate was denied, with the statement, that I do not qualify for single cell housing status.

Upon receiving this his response, I filed a formal grievance of the denial to be evaluated, listing the areas, including physical dangers.

Today, I received my complaint un-processed, indicating, I have provided nothing to substantiate the need for a Z-Code Status.

I believe my complaint, as well as a request to be evaluated, was arbitrarily denied. I believe I'm being denied the opportunity to speak about my concerns privately and have them documented.

I've tried to resolve this concern by speaking with my Unit Manager to no avail. The fact that I believe my mental, emotional and physical well being is in jeopardy and/or danger is issue enough.

I am asking that my grievance to process so that the issues that are endangering my life will be addressed properly, and in a formal manner.

I believe, I am well within the guidelines, to have my concerns aired and documented, concerning what these issues are, and whether they can be resolved and if not, why they cannot.

Thank you,

CC: File (3)

DATE:
SUBJECT:
TO:

12/27/06
Grievance Rejection Form

John Mole AF-0346

Mo. Chenchavich
Facility Grievance Coordinator

FB-43

FOR OFFICIAL USE ONLY

173747
GRIEVANCE NUMBER

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. _____ Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator:
 - a. DC-ADM 801-Inmate Disciplinary and Restricted Housing Unit Procedures
 - b. DC-ADM 802-Administrative Custody Procedures
 - c. other policies not applicable to DC-ADM 804.
2. _____ The grievance does not indicate that you were personally affected by a Department or facility action or policy.
3. _____ Group grievances are prohibited.
4. _____ The grievance was not signed and/or dated **with your commitment name and number**.
5. _____ Grievances must be legible, **understandable**, and presented in a courteous manner.
6. _____ The grievance exceeded the two (2) page limit. Description needs to be brief.
7. _____ Grievances based upon different events shall be presented separately.
8. _____ The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
9. _____ You are currently under grievance restriction. You are limited to one grievance each **15** working days. You filed grievance # _____ on _____ Date _____.
10. _____ Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
11. X _____ The issue(s) presented on the attached grievance has been reviewed and addressed previously in **grievance no.** 91070 **dated** 12/24/03.

*Your last sentence sums up
your real reason for wanting
Z code status*

C-2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Ms. Doretta Chencherick	FACILITY: SCI-Houtzdale	DATE: 12-26-06
FROM: (INMATE NAME & NUMBER) John Frederick Nole, AF-0346	SIGNATURE of INMATE: <i>John F. Nole</i>	RECEIVED Supt's Asst Off DEC 27 2006 SCI - HOUTZDALE PO BOX 1000 HOUTZDALE, PA
WORK ASSIGNMENT: AOD Peer Educator	HOUSING ASSIGNMENT: FB #43	

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner
3. List in Block B any actions you may have taken to resolve this matter. Be sure to list members you have contacted.

A. Provide a brief, clear statement of your grievance. State all relief that you are seeking. Additional paper may be used, maximum two pages. (One DC-804, Part 1 form and one, one-sided 8 1/2" x 11" page).

On December 26, 2006, I was informed by my Counsel Mr. John Bailey, my request to be formally evaluated for a Z-Code single cell status was denied, based on the alleged imposition that I attempted in 2003 to manipulate a Z-Code, through forged documents, and that I did not fit the criteria for Z-Code. It was also told to me that, single celling through the A-Code procedures were not applicable at this prison, as more rational for the denial.

I am grievancing this procedure on the basis, I was denied a copy of the written decision of those individuals who participated in this decision making. I was denied the opportunity to speak with a clinical person, and/or psychologist, concerning my request, and have documented the emotional and psychological anxieties I experience with regards to this request.

I have been arbitrarily denied documentation, demonstrating or showing, what circumstances were used to denied request and evaluations for a Z-Code, and under present date policies.

(See Reversed Side Pg. 2)

B. List actions taken and staff you have contacted, before submitting this grievance.

I spoke with my counsel regarding this situation, and was informed there was not appeal procedures, and that I was not allowed a copy of the decision making.

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date

C-3

December 29, 2006

SUBJECT: Grievance Appeal
173747 12/27/06

TO : George Patrick, Supt.
John F. Nole
FROM : John Frederick Nole, AP-0346
FB #43

Supt. Patrick:

On two occasions now, grievances I've submitted have been foiled, to circumvent my being able to appeal these issues through the complete process.

No. 172403 was denied processing, and then, I received an informal interview from my counselor, who submitted a vote sheet, without recording any of my concerns and issues for compliance with policies for Z-Code and/or single celling consideration.

The denial of processing my grievance, and then attempting to comply with the grievance issues, I originally made, shows a deliberate impedence to the process of having my issues addressed and have an opinion recorded for any further action that might need to take place.

I submitted a second grievance following the results of the submitted vote sheet. This grievance addressed a denial of the material documentation of the vote, and a question of what issues were looked at, and the rationale used to denied me. Without a statement of those issues and concerns addressed in the denial, the conclusion was arbitrary, bias and prejudicial.

This grievance No. 173747 was also denied processing on 12/27/06. I am personally concerned about the prejudice that is being developed against me because I am pursuing an avenue that is open to all inmates and I believe is being denied me arbitrarily, when I know I fit the criteria under multiple circumstances.

If the rationales used, and reported by Mr. Bailey, who stated I attempt^{ed} to forge documents using a High Ranking Official signature. The mental and emotional state of that individual may suggest, they will go to any extreme to show how desperate they are? These are just some of accusation and prejudices, being placed upon and conveniently used at the prison's whim, to denied implementation of policy.

I'm requesting to be able to send both my grievances back through for official processing and appeal rights that are allowed from unfavorable decision.

Thank you,

CC: File


C-4

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Houtzdale
Office of the Superintendent
January 4, 2007

SUBJECT: Appeal of Rejected Grievance #173747

TO: John Nole, AF0346
FB-43

FROM: George N. Patrick
Superintendent

George M. Patrick 

I have reviewed this appeal, the initial grievance, and the response provided by Ms. Chencharick, Facility Grievance Coordinator.

I find the rejection of the appellant's initial grievance by the Facility Grievance Coordinator to be appropriate, and I concur with it. Specifically, the issue grieved was reviewed and given a response previously via grievance #71070 dated 12/24/03. The decision to deny the appellant's request for a single cell was not "arbitrary, bias and prejudicial." Rather, there is no compelling reason to consider such a housing assignment at this time.

Uphold Initial Response.

GNP:mlb

c: Ms. Chencharick
DC-15
file

January 8, 2007

SUBJECT: DENIAL OF GRIEVANCE PROCESSING AND APPEALS
Nos. 172403 and 173747

TO : Ms. Sharon M. Burke,
Chief Grievance Office

FROM : John Frederick Nole, AF-0346
SCI-Houtzdale

Ms. Burke:

Two separate grievances were submitted for processing at SCI-Houtzdale and were arbitrarily denied processing. The nature of these grievances were well within the prescribed area of issues to be addressed through the grievance process. In accordance with the DC-ADM-804, legitimate denial of issues grieved, can be appealed to those in authority that have the authority to resolve disputes. My grievances were not allowed to be processed in a regular manner, as prescribed by regulations, and the denials were arbitrary.

I made a formal request of my Unit Manager to be evaluated for a Z-Code. The evaluation was denied. I made a grievance of the denial, it was denied processing. I appealed to Supt. Patrick, and was subsequently given a interview. There was not recording of my concerns, during this interview. Clearly, the interview was done so that the grievance process could be circumvented, and deny the appeal avenues of pursuit. See: Grievance Rejection Form #172403.

Upon receiving the decision that I was denied my request for Z-Code status, and being denied a copy of the rationale for the decision, I filed a grievance, and stated the procedures that I used.. This was also returned unprocessed. I filed an appeal, requesting that both my submitted un-processed grievances, be allowed to be resubmitted for proper processing. I was denied. SEE: No. 173747..

The rationale for not processing my complaint, was bias, insofar as, the information recently supplied by my present Classification, was not a part of any previous filing under #71070, as stated, by the Grievance Coordinator.

I originally entered the Bureau of Correction under a single cell classification in 1971; and was Grandfathered into single cell status, which has been applicable every where I've been except here at Houtzdale. Here I have been denied single cell housing. The Z-code was established in approximately 1985, and was not designed to punish those individuals that had already been confined in the system under life sentences particularly, and single cell housing.. SCI-Houtzdale, has never established a single cell policy outside of an Z-Code process, ever! and is used Z-Coding to disenfranchise those who have spent 35 years or more in corrections.

The emotional and psychological affect of having to adapt. The stress

○ C-6

○

2

and anxiety created by the lack of compatibility scheme. The placing of me in situations where my time of confinement is being used to punish me under double celling, has created circumstances where I am vulnerable, to assault, and has created circumstances where Pa. Laws can be disproportionately applied in assaulting situation.

I believe, D.O.C. policies, permit convicts to have copies of documents relative to decision made on their behalf, if for no other reason than to address factual issue raised and used in the appeal of decision made on their behalf. I was denied the rational that was used for not granting me single cell status.

I'm requesting that the previous submitted grievances be process and addressed in a proper manner consistent with the grievance policies, and I be given copies of the documents generated to deny my request.

CC: File (3)

O C-2 O

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
Secretary's Office of Inmate Grievance's and Appeals
(717) 975-4954
January 17, 2007

SUBJECT: Grievance Correspondence-Grievance No. 173747

TO: John Nole, AF-0346
SCI Houtzdale

FROM: Secretary's Office of Inmate Grievances & Appeals *bw*

This is to acknowledge receipt of your letter to this office. Upon review of your letter, it is the decision of this office to file your letter without action. You have failed to comply with the provision(s) of the revised DC-ADM 804 effective January 3, 2005.

In accordance with the provisions of the DC-ADM 804, VI D, 1g, a proper appeal to final review must include photocopies of the Initial Grievance, Initial Review, the Appeal to the Facility Manager, and the Facility Manager's decision. The text of your appeal(s) to this office shall be legible, presented in a courteous manner, and the statement of facts shall not exceed two pages.

Review of the record reveals that your appeal(s) is incomplete. You have failed to provide this office with the required documentation that relates to your appeal(s). You are not permitted to appeal to this office until you have complied with all procedures established in DC-ADM 804. **You have ten working days from the date of this memo to provide this office with documents needed to conduct final review. Any further correspondence from you regarding your appeal(s), which does not contain the required documents, will result in a dismissal of your appeal(s).**

/bw

cc: Superintendent Patrick
DC-15

Grievance Office
Central File

"Our mission is to protect the public by confining persons committed to our custody in safe secure facilities, and to provide opportunities to inmates to acquire the skills and values necessary to become productive law-abiding citizens, while respecting the rights of crime victims."

ADMINISTRATIVE MEMORANDUM

Administrative Manual
Volume VI
OM-082.07

SUBJECT: Inmate Housing - Double-Celling

TO: Superintendents

FROM: 
Glen R. Jeffes
Commissioner

I. PURPOSE AND SCOPE:

This Administrative Memorandum establishes policy and procedures for double-celling in the Department of Corrections. It applies to all state correctional institutions and regional correctional facilities.

II. GENERAL POLICY:

The administration of the Department of Corrections is philosophically opposed to double-celling, confining two inmates in a cell originally designed for one. The practice was implemented in response to continued overcrowding and shall remain in place only until it is possible, consistent with good correctional practices, to provide sufficient appropriate cell space to afford each inmate a single occupancy cell. It may not be used as punishment.

III. SELECTION OF CELLS:

Selection of cells to be used for double occupancy should be made pursuant to the following guidelines.

- ✓* — A. Cells in administrative or disciplinary custody may be used for double occupancy only after careful review of those inmates to be double celled for temporary periods, but not to exceed 30 days. Inmates to be continued in this status beyond 30 days require written approval of this office. Inmates in this status shall be exercised daily and showered a minimum of three times per week.
- B. Every attempt should be made to designate cells in the selected locations that afford the most appropriate access, supervision, and control.
- C. The larger cells should be used first.
- D. Cells which present the fewest difficulties in providing adequate security and sanitation should be used first.

IV. DURATION OF DOUBLE-CELLING:

Individual inmates required to live in double occupancy cells on an involuntary basis should be moved to single housing when appropriate single occupancy cells become available.

V. SELECTION OF INMATES TO BE DOUBLE-CELLED:

The selection of inmates to be double celled involves a review of numerous factors. Selected factors are mentioned below as suggestions. The lists, however, are not exhaustive, and other factors deemed appropriate by the institution may also be weighed.

A. ~~The following inmates should not be double-celled:~~

1. ~~Inmates of opposite sexes.~~
2. ~~Same sex inmates with known or suspected homosexual tendencies.~~
3. ~~Inmates who are emotionally or mentally disturbed.~~
4. ~~Inmates in Diagnostic Centers should not be double-celled without extreme caution. The inmates who have been classified and are awaiting transfer to another institution should be considered before those who are unclassified. The practice of double-celling in the Diagnostic Centers or Assessment Units is an exception to the policy stated in OM-102, Chapter VII, subsection 01, B. hereby authorized to accomplish necessary double-celling.~~
- *-5. ~~Inmates in administrative and disciplinary custody should not be double-celled without a thorough review and careful consideration by an appropriate staff body.~~

B. Voluntary:

1. ~~Inmates who agree to share a cell should be the first considered for double-celling.~~
2. ~~Requests to share a cell should be carefully evaluated to ensure that it is appropriate for the requesting inmates to be housed together. Voluntary double-celling may be continued indefinitely as long as double-celling is necessary. This shall not be construed as a right of inmates to be double-celled.~~

C. Involuntary:

1. The institution should attempt to double-cell inmates who will be compatible with each other. In determining compatibility, some factors to be considered include:
 - a. Familial relationship, e.g., brothers, cousins
 - b. Age
 - c. Race and ethnic biases of the inmates to be housed together
 - d. Interests
 - e. Geographic identity
 - f. Length of sentence
 - g. Program assignment (job, education, etc.)
 - h. Program level
 - i. Security needs (escape, substance abuse, violence, deviate sexual acts, etc.)

- j. Behavioral disposition and attitude
- k. Group identification (gangs, etc.)
- l. Sophistication (prior incarceration, etc.)
- m. Other factors deemed appropriate by the institution

2. Involuntary double-celling of appropriate inmates may be continued as long as necessary. No inmate may refuse to double-cell.

VI. PROCEDURE:

A. Identification of inmates for possible double-celling:

- 1. Inmates may request consideration.
- 2. Staff may suggest inmates for consideration.

B. Interviews: Each inmate considered for double-celling should be interviewed separately by staff to determine willingness and to identify any possible problems or pressures being applied to inmate.

C. Staff approval: All criteria should be considered and appropriate staff shall approve or disapprove double-celling for each case.

✓ * -D. Orientation: Each inmate involved in double-celling will be informed of the conditions which apply. In this orientation, staff will include rules governing behavior as well as those governing the conditions and contents of the cell. Also included will be the procedures for requesting consideration for termination of double-celling.

✓ * -E. Monitoring: Inmates doubling up should be properly supervised and interviewed regularly to ensure problems are quickly identified and corrected.

VII. DORMITORIES:

Dormitories established to accommodate special programs, such as the forestry camps, are not considered part of the General Policy or Procedures of the administrative memorandum. ~~Dormitories established and used only for the purpose of accommodating the overcrowding shall be governed by the provisions of this administrative memorandum and should continue only until it is possible consistent with good correctional practices to provide sufficient appropriate cell space to afford each inmate a single occupancy cell.~~

VIII. INSTITUTIONAL AUTHORITY:

Each institution shall have the authority to develop local implementation procedures consistent with this administrative memorandum. Any exception to the policies and procedures herein contained must be approved in writing by my office.

IX. PERIODIC REVIEW:

This administrative memorandum shall be reviewed periodically (no less than annually) to ensure that it is meeting the objective.

X. EFFECTIVE DATE:

This Administrative Memorandum shall be effective immediately and supersedes the November 10, 1983 memorandum entitled, "Inmate Housing - Double-Celling" and all other previous communique on this subject.

GRJ:jb

cc:

Deputy DeRamus

T. Otto

Regional Directors

Department Directors

D. Gearhart

F. Gillis

K. Robinson

Ex E-1

Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

December 20, 2006

Mr. Jeffrey Beard, Secretary
Department of Correction
P.O. Box 598
Camp Hill, Pa. 17001-0598

Dear Mr. Beard:

I am writing this letter on behalf of my brother John Frederick Nole, who is housed at your prison in Houtzdale. My brother Freddie, is a lifer and has been in prison now for over 37 years.

My Brother, was recently approached by his Unit Manager in October of this year, and asked if he wanted to be transferred closer to home. He said yes. He did not know at the time our mother had been hospitalized several time, and has recently been advise, she cannot endure long trips. But he did not request a promotional transfer on his own, it was however, offered to him. My brother's transfer was denied because his classification is an escape risk and security threat, and he will not be considered for at least five years. He's been at his present location for over 3 years now. But has been in the middle and western part of the state over 17 years.

My brother recently informed me he tried to get a Z-Code housing assignment based on this classification, and your recent issuing of a new Long Term Confinement and Administrative Custody Placement Directive which places my brother in jeopardy, due to this Escape/Security Risk History.

The transfers that have been attributed to my brother over the last 17 years that he's been between Huntingdon and now Houtzdale, was attributed to him being an escape risk and a security threat. I don't believe my brother is either, but your prisons have created this history for him, and I don't believe that my brother should be place in situations where he can succumb to circumstances that will further jeopardize his liberty, and possibly curtail program and family interaction, because of someone else misbehavior.

This escape risk classification is been established to deny my brother the opportunity to get closer to our families, but does not have the substance to provide him living circumstances so his life and livelihood is not put in danger.

As far as I know, my brother has been allowed single living situation based on his time of confinement every where he's been, and until recently had been given consideration at Houtzdale, but is now being deny the opportunity to even be evaluated by Houtzdale Staff, for single housing, based on this new information.

If my brother is an Escape Risk and Security Threat, as he's been classified, there is no reason for him not to have a single celling situation, to reduce this attributed history from continuing.

E-2

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. Mr. Beard, my brother has tried to resolve this with the Houtzdale Administration, to no avail, and has sought out our family for assistance, and we will do whatever we must to assure our brother is not hurt, and has the opportunity to not be unduly hurt and/or injured by prison stigmas.

I thank you for your assistance in reviewing this matter, and look forward to any response you feel appropriate.

Sincerely,

Loretta Nole

CC: Brother
File



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

January 8, 2007

Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150

RE: J. Nole, AF0346

Dear Ms. Nole:

Your letter dated December 20, 2006 regarding your brother's request to have a Z code place on his file has been received by my office for response. Please understand that program codes, specifically Z codes, are assigned by the institutional staff, not Central Office. There are specific criteria outlined for inmate's requesting Z codes and the institution is in the best position to determine whether Mr. Nole meets the specific criterion. I would suggest that he discuss this matter with his counselor and Unit Management Team at SCI-Houtzdale.

Thank you for your interest and support of Mr. Nole. I trust that this addresses your concerns.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/sp

cc: Deputy Secretary Moore
Superintendent Patrick
Corr. #: 2006-C17-000000168
Central File
File

Ex. F-1

930 Mill Grove Drive
Norristown, Pa. 19403
April 4, 2007

Jeffrey Beard, PhD
Secretary
Department of Corrections
PO Box 598
Camp Hill, Pa. 17001-0598

Dear Secretary Beard,

My sister-in-law, Loretta Nole, wrote to you previously about her brother and my husband, John F. Nole AF0346, who is a prisoner at SCI-Houtzdale, and his cell situation. Your response was that he should deal with the staff at SCI-Houtzdale regarding evaluation for a Z-code.

My husband has attempted to be evaluated for the Z-code, but he feels that he has not been properly evaluated for a single cell status. He feels that his requests to staff to be properly evaluated have resulted in him being transferred to another block, to another double cell situation. Several weeks ago, I attempted to speak with Superintendent Patrick about his cell situation and the transfer and was told that I would have to speak with Major Close. I left my phone number with his secretary, but have yet to receive a return call. This is not the first time that staff there has not responded to a communication that I have addressed to them.

I have also enclosed some correspondence from staff to my husband regarding his cell situation. How should we receive the comments made? "Perhaps you will have better luck at another facility?"

My family and I are concerned about our loved one and hope that this letter will not result in any retaliatory treatment of either him or us.

My husband has been in prison since 1969, when he was seventeen years old, is serving a life sentence and is currently almost fifty-five and one-half years of age. He has made the most of his time in prison, being active in many organizations and programs, often in a leadership role, going to school and working. We have been married for almost 23 years; we have known each other for 25 years.

When I first knew my husband, every prisoner was single celled. I was aware that when double cells began in the 1980's, that lifers who were in the system at the time were told that they would continue in the single-cell status. When did this stop? My husband is not accustomed to having to live with someone in such a confined space, after all of these years. Until recently, my husband always lived by himself in many prisons, but recently it has become revolving door cellmate, since his transfer to SCI-Houtzdale. Why has this changed?

Why has my husband's request to be properly evaluated for a Z-code been denied? It is my understanding that there are also A-codes for people in my husband's situation. Why is he not eligible for that with his age, time and sentence? What are other programs for single cells, besides Z-codes, because I believe that there are prisoners with less time in than my husband with single cells who do not have Z-codes at the prison? What is the program that allows people with less time in than my husband to live in a single-cell situation without having a Z-code? When will my husband be able to live alone again?

This is not the first time that procedures available have not been afforded to my husband at this prison. My husband suffers from high-blood pressure, which is treated, but adequate water and time was not provided to him for a random drug test and he was not allowed to give hair, which he asked to do many times. Why was this not allowed? It seems that DOC policy allows for hair to be a way to do the random drug test. My husband tried to provide a sample, but was unable to with the amount of water and time provided. Urinating is not a voluntary bodily function. The bladder needs to be sufficiently full for one to be able to urinate; this requires an adequate amount of fluid and time, which should be provided and was not provided. Why are prisoners not given enough to drink and enough time? The blood pressure medicine that my husband is administered affects the fluid levels in his body. My husband has no history of substance abuse. I am a hard-working, tax-paying, college-educated professional and a law-abiding citizen. I am all for keeping our prisons drug-free. I also expect prisoners, including my husband, to have every opportunity available to them to be able to prove that they are not abusing any substance. Since the system treats those who are not be given enough to drink or time the same as people who have positive test results, procedures need to be followed to make certain that those who are attempting to provide a sample have enough time and fluids to do so, or let them provide a hair sample, if they are having difficulty.

Thank you for your personal reply addressing my concerns and questions regarding my husband.

Sincerely,

Susan Beard-Nole

Cc: Rep. Carole Rubley



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

Ex. F-3

OFFICE OF THE
SECRETARY OF CORRECTIONS

April 16, 2007

Susan Beard-Nole
930 Mill Grove Drive
Norristown, PA 19403

Re: John Nole, AF-0346

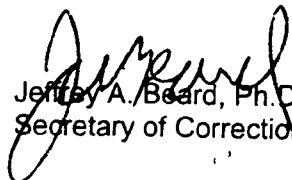
Dear Ms. Waite,

I am in receipt of your letter concerning obtaining a single cell and the random drug testing for your husband John Nole, AF-0346, who is incarcerated at SCI Houtzdale.

Your husband has been evaluated for single cell status. It has been determined that he does not meet Department of Corrections criteria for a single cell. The recent dramatic increase in the population has resulted in all available cell space being utilized. Your husband may have been in a single cell previously, but he has never had single cell status. Therefore, he is appropriately placed in a double cell. Your husband was provided with the allotted time and fluid to provide a sample for a random drug test, which has been proven to be adequate by national testing data. The request for a hair sample test is only provided to refute a positive test, not for failure to provide a sample.

I assure you our Department is committed to ensuring that each institution is operated in a manner that complies with all Department of Corrections policies and procedures.

Sincerely,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

JAB/krh

cc: Superintendent George Patrick
Keri Moore #2007-C17-000000069
Central File
File

" G-1 "

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, Pa. 19150

March 21, 2007

Mr. George Patrick Superintendent
Houtzdale Prison - P.O. Box 1000
Houtzdale, Pa. 16698-1000

Dear Mr. Patrick:

I'm writing on behalf of my brother John F. Nole.

I wrote Secretary Beard a while back concerning my brother's living circumstances at your prison. I was informed that the issue must be handled at the facility level by my brother. After a lengthy conversation with my brother, I've been assured he's addressed this issue with you and your staff, on a couple of occasions.

Mr. Patrick, I would like to know, if I may, why my brother, after never needing a Z-Code to maintain his single cell status throughout his almost 38 years in prison, now needs a Z-Code to acquire single housing, but has been refused by you and your staff, without a formal evaluation? I would also like to try and understand the rational of why my brother it appears, is punished and treated worst with the more time he puts in?

Freddie, has been at your facility now for shortly over three years, and from speaking with him, he seems to have done some positive things and gives his time and services; is negative behavior rewarded more than positive behavior?

Mr. Patrick, I'm requesting for my own peace of mind, why my brother, with all the time that he has in, cannot be given some type of consideration?

I do believe my brother when he tells me his mental and emotional well being is threaten, by having little or nothing in common with, as he put it, "THE NEW BREED OF PRISONER".

My brother has never had a problem maintaining single cell living at any of the other places, and that is been without a Z-Code. Is the number of years a person is in prison, not a factor for single cell living?

In closing Mr. Patrick, my family and I encourage my brother to do his best and work with those around him, has he not done this?

I plead with you to address this issue, it's an emotional stress on all of my family to think my brother is being placed in living situation where he can be hurt because he has a different way of living in your prison than most who come in and are there. I know my brother to be very responsible.

Very truly yours,

Loretta Nole

CC: File

Jeffrey A. Beard, Ph.D.
Secretary



George N. Patrick
Superintendent

Pennsylvania Department of Corrections
State Correctional Institution at Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000

PHONE: (814) 378-1000 FAX: (814) 378-1030

April 4, 2007

Ms. Loretta Nole
8113 Forrest Avenue
Philadelphia, PA 19150

Re: John Nole, AF0346

Dear Ms. Nole:

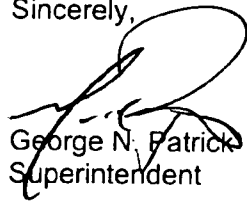
This is in response to your correspondence dated March 21, 2007, regarding your brother, John Nole AF0346.

The Z-code is a program code assigned to inmates for single celling purposes. In most instances, this is assigned to an inmate who poses a threat to others if double celled. Inmates serving long term sentences are not specifically granted a Z-code for this reason alone. Our intent is to carefully screen and limit unnecessary single-cell assignments due to the absence of available Departmental bed space.

The Pennsylvania Department of Corrections' inmate population is growing at a startling rate. The inmate population at SCI-Houtzdale is a reflection of this growth. Although the Department is exploring additional new housing initiatives and maximizing the use of community corrections bed space, there does not appear to be any imminent relief which would allow us the leisure to house your brother in a cell by himself. While I am sympathetic to your concerns, be assured that your brother does have some ability to choose his cellmate on the housing unit in order to minimize his contact with inmates he feels are less desirable.

I trust this addresses your concerns.

Sincerely,


George N. Patrick
Superintendent

GNP:CG

c: Major Close
Mr. C. Garman

DC-15
file

"Our mission is to protect the public by confining persons committed to our custody in safe, secure facilities, and to provide opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens; while respecting the rights of crime victims."

EX "H"

John Frederick Nole, AF-0346

March 4, 2007

Mr. Frazier Blake,
F-Block Unit Manager

Dear Mr. Blake:

I've written you prior, asking for consideration for single cell house under both the Z-Code and A-Code, both of which have been denied. I am again requesting single cell living status. I believe strongly, while you have the authority to put me in a protective cell status, you've refused to do so lately, for any significant period of time. I believe, I have earned this consideration. I am a contributor to the betterment of the institution. I volunteer both my time and my services. I am among the top 1 to 5 people at Houtzdale with over 35 years in the D.O.C., and in over three year at the institution, I have maintain relatively good behavior.

While I differ in my belief from yours, that I do not qualify for a Z-Code, single living situation, since that is all that is offered at this prison, certainly my overall adjustment, program contribution, time of confinement and involvement, warrants some consideration for single cell protection, given to individuals on other housing units, and who contribute nothing towards the better of this institution.

While you may deem having me adjust and readjust to different cell-mates on weekly basis, and I'm not down-playing your generosity, that is more mental and emotionally stressful.

I've never had a Z-Code, because I've always been given a grandfather privilege of having been in corrections before codes were required. Surely you are aware, as Unit Manager, under what circumstances I live, is your call?

Thank you for the time you have given this communication.

Sincerely,

John F. Nole
John Frederick Nole

CC: File

*Mr Nole,
you are not getting a Z-Code.*

BLAKE
3/5/07

6 Exhibit
" T "

6

Form DC-135A INMATE'S REQUEST TO STAFF MEMBER	Commonwealth of Pennsylvania Department of Corrections INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.
1. To: (Name and Title of Officer) <u>Supt. Patrick</u>	2. Date: <u>March 7, 2007</u>
3. By: (Print Inmate Name and Number) <u>John F. Nole, AFO346</u> <u>John F. Nole</u> Inmate Signature	4. Counselor's Name <u>UNKNOWN</u> 5. Unit Manager's Name <u>UNKNOWN</u>
6. Work Assignment <u>AD Peer Educator</u>	7. Housing Assignment <u>EA 4</u>
8. Subject: State your request completely but briefly. Give details. <u>Supt. Patrick:</u> <u>While I understand I don't have a right to live in my specific area of the inst. I should not be punished because I avail myself of procedures to inquire about various policies.</u> <u>Since I may very well die in prison how I live and under what circumstances is important to me. Since this inst. does not allow single cell living except by way of 2-Code, and when I requested valid information why I don't qualify, I'm deemed and labeled disruptive and transferred from the unit by mr.</u>	
9. Response: (This Section for Staff Response Only) <u>John -</u> <u>Any "contributions" you might make are overshadowed by your NEEDINESS. Due to the overpopulation, I do not have the luxury of having single cells. You don't qualify.</u> <u>For a 2 code perhaps you will have better luck in Prison Facility</u>	
To DC-14 CAR only <input type="checkbox"/>	To DC-14 CAR and DC-15 IRS <input type="checkbox"/>

Staff Member Name

Sign

Date

For a 2 code perhaps you will have better luck in Prison Facility
JANICH 3/7/07
cc: Mr. BUCK

Blake via Deputy Britton's Instructions?
BECAUSE I'M ASKING legimate questions?
I Really Am CONCERN about my safety
And well being if Just one staff
member can deem me a threat
to the normal orderly running of the
inst. And transferred me on a whim.
This transfer come one day
after I asked Mr. Blake to
take into consideration my
time in and allow me protective
cell time, a policy that is rendered
to those who ARE contributors.
How should I view this treatment
Sir?

John T. Rolle

Ex 4 5 11

Classification System Custody Levels	
Custody Level	Type of Supervision
1	Community Corrections (Pre-Release)
2*	Minimum
3	Medium
4	Close
5	Maximum

*Custody Level 2 inmates are not permitted outside of the institutional perimeter without additional approval and assignment of Program Codes.

Program Code	Custody Level	Definition
A	2, 3	House in Single Cell (Long Term Offender) Note: This is based upon favorable adjustment and space availability.
C	1, 2	Community with Supervision
D	5	Death Penalty
E	1	Educational/Vocational
F	1	Furlough
G	1	Community Corrections Center
H	3, 4, 5	High Risk
M**	2	Minimum Supervision
N	N/A	New Commitment
O	1, 2, 3, 4, 5	Observation
P	2, 3, 4, 5	Parole Violator Pending
R**	2	Regular Supervision
S	5	Solitary Confinement
T	5	Temporary RHU
W	1	Work Release
X**	2	Armed Supervision
Y	2, 3, 4, 5	Natural Life Sentence
Z	1, 2, 3, 4, 5	House in Single Cell

FILED

JUL 30 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

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

JOHN FREDRICK ~~NOBLE~~ ^{NOLES}
Plaintiff ^{PSA}

vs.

GEORGE FITZPATRICK

*
*
*
*

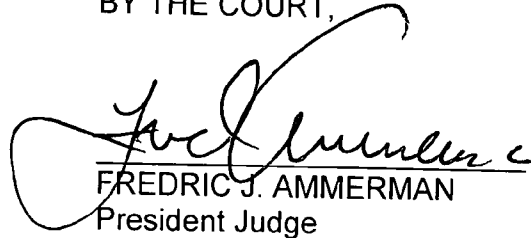
NO. 07-701-CD

ORDER

NOW, this 10th day of July, 2007, the Court being in receipt of the Defendant's Preliminary Objections, it is the ORDER of this Court as follows:

1. The Preliminary Objections shall be decided without oral argument.
2. Both parties shall have no more than 30 days from this date to supply the Court with an appropriate brief on the issues.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

012:36/07
JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC Piff
SCI Houtdale
ICC Any
McGovern
EW

FILED

JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/10/07

 You are responsible for serving all appropriate parties.

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

 X Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

: CIVIL ACTION-LAW
:
:
: No. 2007-00701-C.D.
:
:
:
:
:

MOTION TO AMEND COMPLAINT

This Court has jurisdiction under Rules of Civil Procedure 1033

Petitioner in this instant matter comes now before the court with a motion to file an Amended Complaint in the above entitled matter.

Petitioner avers, that under the Rules of Civil Procedures, an Amended Complaint can be filed at any time to Correct Defects in the Complaint, and/or make clarity to the issues set forth for all participants.

Plaintiff's request to amend his complaint is based upon the Preliminary Objections set for by the defendants' representative, filed before the court on June 29, 2007, and served upon plaintiff.

DATE: July 3, 2007

Respectfully submitted,

John F. Nole
JOHN FREDERICK NOLE

P.O. BOX 1000 - AF-0346
HOUTZDALE, PA. 16698-1000

FILED

JUL 06 2007

W/10:15/W

William A. Shaw
Prothonotary/Clerk of Courts

1 CFN+ to PLS

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,	:	CIVIL ACTION-LAW
Plaintiff	:	
	:	
Vs.	:	No. 2007-00701-C.D.
	:	
GEORGE W. PATRICK,	:	
RENDALL BRITTON	:	
FRAZER BLAKE	:	
JOHN BAILEY	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, John Frederick Nole, hereby certify that I have served the foregoing Certificate of Service with the MOTION TO AMEND. upon the party listed below:


on July 3, 2007, this being pursuant to the State Rules of Civil Procedures, and in the manner listed below, which service satisfies the requirements of the Pennsylvania State Rules of Civil Procedures.

SERVICE BY FIRST CLASS MAIL, POSTAGE PRE-PAID.

ASSISTANT COUNSEL
Michael J. McGovern,
Pa. Department of Corrections
55 utley Drive
Camp Hill, Pa. 17011

Attorney for the Defendants in this instant matter.

Respectfully submitted,


John Frederick Nole
P.O. box 1000 - AF-0346
Houtzdale, Pa. 16698-1000

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION- (LAW) (EQUITY)

No. 2007-00701-CD

Type of Case: Tort Civil Rights

John Frederick Nole
Plaintiff

Type of Pleading: Preliminary Objections

VS.

Filed on Behalf of:

Defendants

(Plaintiff/Defendant)

George W. Fitzpatrick
Defendant

Counsel of Record for this Party:

Michael J. McGovern
(Name of Attorney)

Supreme Court No.: 52802

Pennsylvania Department of Corrections
(Firm name, if any)

55 Utley Drive, Camp Hill, PA 17011
(Address)

(717) 731-0444
(Phone)

Dated: June 29, 2007

FILED

JUL 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

○ ○

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

JOHN FREDERICK NOLE,

Plaintiff,

v.

GEORGE W. PATRICK, RANDALL
BRITTON, FRAZER BLAKE, and
JOHN BAILEY,

Defendants.

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: CIVIL ACTION - LAW
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: No. 2007-00701-CD
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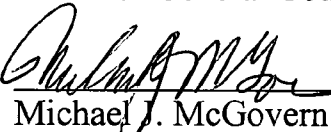
NOTICE TO PLEAD

TO: John Frederick Nole, AF-0346
SCI-Houtzdale
P.O. Box 1000
209 Institution Drive
Houtzdale, PA 16698-1000

You are hereby notified to file a written response to the enclosed
Preliminary Objections to Plaintiff's Complaint within twenty (20) days from
service hereof or default judgment may be entered against you.

Respectfully submitted,
Office of General Counsel

By:


Michael J. McGovern

Assistant Counsel
PA Attorney I.D. No. 52802
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: June 29, 2007

○ ○

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

JOHN FREDERICK NOLE,

Plaintiff,

v.

GEORGE W. PATRICK, RANDALL
BRITTON, FRAZER BLAKE, and
JOHN BAILEY,

Defendants.

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: CIVIL ACTION - LAW
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: No. 2007-00701-CD
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**DEFENDANTS' PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT**

AND NOW, come Defendants, by and through their counsel, and
preliminarily object to Plaintiff's Complaint, and in support thereof aver:

FACTS

1. Plaintiff has been an inmate in the custody of the Pennsylvania
Department of Corrections since March 31, 1971. (Complaint, ¶ 6).

2. On September 30, 2003, Plaintiff was transferred to the State
Correctional Institution ("SCI") at Houtzdale and has remained incarcerated in that
facility since that date. (*Id.*, ¶ 7).

3. The Defendants are all employees of the Pennsylvania Department of
Corrections ("DOC") assigned to the SCI-Houtzdale. (*Id.*, ¶¶ 3-6).

4. The gravamen of Plaintiff's Complaint is that the Defendants have failed or refused to provide him with his own cell and have instead assigned him to cells where he has a cellmate.

5. Plaintiff alleges that this has: (1) caused him to be placed in danger (*Id.*, ¶¶ 8, 19, 24, 30); (2) caused him mental and emotional anxiety (*Id.*, ¶¶ 23, 24); (3) resulted in him being threatened with retaliation by Patrick, Britton, and Blake (*Id.*, ¶ 25); (4) resulted in him being moved from his original housing unit for no penological objective (*Id.*, ¶ 26); and (5) resulted in him being discriminated against (*Id.*, ¶ 27).

6. Plaintiff alleges that the Defendants' refusal to provide him with a single cell: (1) is unlawful and biased (*Id.*, ¶ 9); (2) is reckless and negligent (*Id.*, ¶ 19); (3) violates Department of Corrections policies (*Id.*, ¶¶ 21, 29, 31-33, 37); and (4) violates 18 Pa. C.S. §§ 2703, 2704, and 2705 (*Id.*, ¶ 35).

7. Plaintiff alleges that he exhausted all of his available administrative remedies before initiating this action. (*Id.*, ¶ 17).

DEMURRER PURSUANT TO Pa. R.C.P. 1028(a)(4)
RECKLESSNESS, NEGLIGENCE, and INFLICTION OF EMOTIONAL
DISTRESS

8. The Pennsylvania Constitution states: "Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases as the Legislature may by law direct." *Article I, Section 11.*

9. "Pursuant to Section 11 of Article I of the Constitution of Pennsylvania, it is hereby decreed to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive immunity."

10. The exceptions to sovereign immunity that the General Assembly has statutorily created are found at 42 Pa. C.S.A. § 8522(b). The enumerated exceptions are for: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways, and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines.

11. In construing 42 Pa. C.S.A. § 8522(b), the Pennsylvania Supreme Court has held that "[b]ecause of the clear intent [of the Act] to insulate government from exposure to tort liability, the exceptions to immunity are to be strictly construed." *Dean v. Commonwealth Department of Transportation*, 561 Pa. 503, 508, 751 A.2d 1130, 1132 (2000).

12. None of the Defendants' actions that Plaintiff characterizes as negligent, careless, or reckless fall within the statutory exceptions to sovereign immunity.

13. Additionally, to the extent Plaintiff alleges these actions were deliberate, "intentional torts and civil rights action are not within the narrow exceptions set forth in 42 Pa. C.S.A. 8522(2)." *Faust v. Commonwealth of Pennsylvania Department of Revenue*, 592 A.2d 835, 839 (Pa. Cmwlth. 1991), *petition for allowance of appeal denied*, 530 Pa. 647, 602 A.2d 257 (1992).

WHEREFORE, to the extent that Plaintiff's claims are based on common law theories of negligence, Defendants move the Court to dismiss those claims.

DEMURRER PURSUANT TO Pa. R.C.P. 1028(a)(4)
CRIMINAL STATUTES

14. Plaintiff alleges that forcing him to share a cell violates 18 Pa. C.S.A. § 2705, which states: A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.

15. He further alleges that the Defendants' refusal to provide him with a single cell places him in danger of being assaulted as that crime is defined in 18 Pa. C.S.A. §§ 2703 and 2704.

16. Pa. Rule of Criminal Procedure 506 states: Approval of Private Criminal Complaints –

(A) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay. (B) If the attorney for the Commonwealth: (1) approves the complaint, the attorney shall indicate this

decision on the complaint form and transmit it to the issuing authority; (2) disapproves the complaint, the attorney shall state the reason on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

17. Plaintiff has failed to follow the procedures set forth in Pa. Rule of Criminal Procedure 506.

WHEREFORE, Defendants move the Court to dismiss Plaintiff's claims based on allegation of violations of the Criminal Code.

PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(3)
INSUFFICIENT SPECIFICITY IN A PLEADING

18. Plaintiff has alleged that the Defendants have collectively violated other statutes, regulations, policies, and directives.

19. Plaintiff has failed to identify in any way what statutes, regulations, policies, or directives he believes were violated with the requisite specificity for the Defendants to adequately defend these claims.

20. "[A]lthough a party need not specifically plead the Act of Assembly ostensibly violated, sufficient facts must be pleaded to bring the case within the appropriate statute." *Department of Transportation v. Shipley Humble Oil Company, et al.*, 370 A.2d 438, 440 (Pa. Cmwlth. 1977).

21. Further, to the extent Plaintiff is basing his claims on DOC policies, to the extent those policies specifically state that they do not create any rights in any

person, they do not create judicially enforceable rights. *Weaver v. Pennsylvania Department of Corrections*, 829 A.2d 750, 752-53 (Pa. Cmwlth. 2003).

WHEREFORE, Defendants move the Court to dismiss Plaintiff's claims to the extent they are based on alleged violations of statutes, regulations, policies, or directives.

DEMURRER PURSUANT TO Pa. R.C.P. 1028(a)(4)
CONSTITUTIONAL CLAIMS

22. To the extent Plaintiff is asserting claims based on any alleged constitutionally protected right to a single cell, there is no absolute constitutional right to single cell status. *Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2393, 69 L.Ed.2d 59 (1981).

23. Plaintiff has failed to allege any facts which would support a claim that not assigning him his own cell in any way violates his Eighth Amendment right to be free of cruel and unusual punishment.

WHEREFORE, Defendants move the Court to dismiss Plaintiff's claims that he is entitled to a single cell to the extent those claims are based on any alleged violation of a constitutional right.

DEMURRER PURSUANT TO Pa. R.C.P. 1028(a)(4)
DISCRIMINATION

24. Plaintiff alleges that Defendants Patrick, Britton, and Blake discriminated against him by providing single cells to inmates who have been incarcerated for significantly less time than him.

25. The gravamen of any discrimination case is that the Plaintiff is being treated differently than other similarly situated individuals and that treatment is based on the Plaintiff's membership in a constitutionally or statutorily protected class.

26. Plaintiff has failed to identify any similarly situated inmates at SCI-Houtzdale who are receiving disparate treatment.

27. Further, "inmates sentenced to life imprisonment" does not constitute a protected class.

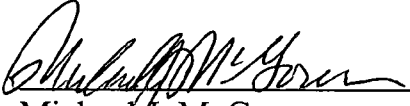
WHEREFORE, Defendants move the Court to dismiss Plaintiff's claims to the extent he is alleging he is the subject of discrimination.

CONCLUSION

For the foregoing reasons, Defendants move the Court to dismiss all of Plaintiff's claims made against them and to enter judgment in their favor.

Respectfully submitted,

Office of General Counsel

By: 
Michael J. McGovern
Assistant Counsel
Attorney I.D. No. PA52802
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: June 29, 2007

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

JOHN FREDERICK NOLE,

Plaintiff,

v.

GEORGE W. PATRICK, RANDALL
BRITTON, FRAZER BLAKE, and
JOHN BAILEY,

Defendants.

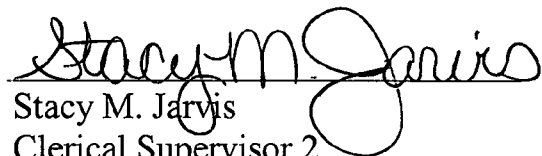
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: No. 2007-00701-CD
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CERTIFICATE OF SERVICE

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of the Defendants' Preliminary Objections to Plaintiff's Complaint upon the person(s) in the above-captioned matter.

Service by first-class mail
addressed as follows:

John Frederick Nole, AF-0346
SCI-Houtzdale
P.O. Box 1000
209 Institution Drive
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: June 29, 2007

FILED

JUN 18 2007

W/10-30(W)
William A. Shaw

William A. Shaw
Prothonotary/Clerk of Courts

1 cent to 172

GEORGE W. PATRICK, RANDALL
BRITTON, FRAZER BLAKE, and
JOHN BAILEY,

PRAECIPE FOR ENTRY OF APPEARANCE

Kindly enter my appearance as counsel on behalf of all Defendants in the above-captioned matter.

Respectfully submitted,

Office of General Counsel

By:

Michael J. McGovern

Assistant Counsel

Attorney I.D. No. 52802

Pennsylvania Department of Corrections

55 Utley Drive

Camp Hill, PA 17011

(717) 731-0444

Dated: June 15, 2007

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

JOHN FREDERICK NOLE,

Plaintiff,

v.

GEORGE W. PATRICK, RANDALL
BRITTON, FRAZER BLAKE, and
JOHN BAILEY,

Defendants.

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: CIVIL ACTION - LAW
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: No. 2007-00701-CD
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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 Praecept for Entry of Appearance upon the person(s) in the above-captioned matter.

Service by first-class mail
addressed as follows:

John Frederick Nole, AF-0346
SCI-Houtzdale
P.O. Box 1000
209 Institution Drive
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: June 15, 2007

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 07-701-CD

FILED NO cc
MAY 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

NOTICE TO DEFEND

(5-11-07)
4 CERT TO
PLFF ON
5-24-07

You have been sued in court. The Petition set forth in the following pages request the court to determine the amount which should be credited against any liability you may have to the petitioner. You must take action within twenty days after this Petition and Notice is served upon you by entering a written appearance personally or by an attorney and file in writing with the court your defense or objections to the matters set forth in the petition. You are warned if you fail to do so, the case may proceed without any further notice for any claim of relief requested by the petitioner. You may lose money or property, or rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER 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.

Office of Chief Counsel
55 Utility Drive
Post Office Box 598
Camp Hill, Pa. 17001-0598

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

: CIVIL ACTION-LAW
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No.

PLAINTIFF'S COMPLAINT AGAINST DEFENDANTS,
GEORGE W. PATRICK, RENDALL E. BRITTON, FRAZER BLAKE AND
JOHN BAILEY

AND NOW, comes the Plaintiff John Frederick Nole, a prisoner proceeding pro se and files the following complaint:

1. Plaintiff, John Frederick Nole, is an adult individual residing at SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000 in Clearfield County, who is the injured party in this cause for complaint.
2. George W. Patrick, is the Superintendent of the Houtzdale Facility, P.O. Box 1000, Houtzdale, Pa. 16698-1000
3. Randall E. Britton, is the Facility Manager of the Houtzdale Facility, at P.O. Box 1000, Houtzdale, Pa. 16698-1000.
4. Frazer Blake, is a Unit Manager at the SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000.
5. John Bailey, is a Counselor at SCI-Houtzdale, P.O. Box 1000, Houtzdale, Pa. 16698-1000.
6. On March 31, 1971, Plaintiff, John Frederick Nole, entered then the Bureau of Correction, and has been incarcerated consistently since that time, in the D.O.C. for 36 years.
7. Plaintiff has been single cell since his incarceration, until he entered SCI-Houtzddale, September 30, 2003, where his

life, due to involuntary double celling, has repeatedly been placed in danger by the reckless and arbitrary suspension of prison rules and policies, by the defendants.

8. The Defendants mentioned herein have engaged in unlawful and bias practices of prison rules and policies.

9. Plaintiff on December 12, 2006, requested through Defendant Blake, to be evaluated for a single cell, and was refused, by both he and defendant Bitton, stating plaintiff did not qualify.

10. As a result of that refusal, plaintiff made an appeal to Defendant Patrick, who never responded writtenly.

11. Plaintiff, was called into defendant Bailey's office, and stated, "while he would like to give plaintiff a single cell, he would not recommend a Z-Code".

12. Plaintiff requested that Mr. Bailey document his statement and record plaintiff concerns for his safety and well being in a double cell situation and that he be scheduled to see a psychologist, defendant did neither.

13. Plaintiff, on or about December 26, 2006 was summons to Defendant Bailey's Office, and was told his request for a Z-Code Status was denied, because he did not fit the criteria.

14. Defendant Bailey failed to provide documentation of said denial, and verbally stated, as a rational, plaintiff was denied because he had tried to manipulate a Z-Code, by placing forged documents in a counselor's file while confined at SCI-Greene County Prison.

15. Plaintiff grievanced this denial, and was refused the processing of it by Defendant Patrick's office.

16. Plaintiff made a direct appeal to Defendant Patrick, and it

was denied, by the defendant.

17. Plaintiff made an appeal to the Chief Grievance Secretary at Central Office, and was denied.

COUNT I-RECKLESS ENDANGERMENT

PLAINTIF, JOHN FREDERICK NOLE, VS. DEFENDANTS, GEORGE PARTICK, RENDELL BRITTON, FRAIZER BLAKE AND JOHN BAILEY.

18. Plaintiff incorporate paragraph 1 thru 17 by reference as if set forth in length.

19. Plaintiff avers that the recklessness, carelessness, and negligence of defendants Patrick, Britton, Blake and Bailey, has consistently place plaintiff's life in peril.

20. Plaintiff avers, because the defendants have routinely suspended Administrative Policies on capability schemes for those whom they involuntarily double cell, they've created an arbitrary housing policy that promotes violence, mental anguish, negligence and a breakdown in safety requirements.

21. Plaintiff avers, that the recklessness and negligence of Defendants Patrick, Britton, Blake and Bailey, under an arbitrary in-voluntary double celling, places young with old; smokers with non-smokers, muslims with christians, educated with uneducated, diseased with healthy, for the expressed purpose of breeding volatile circumstances, in direct violation of Department of Corrections policies for involuntary double celling.

22. Plaintiff avers, that defendant Bailey, deliberately refused during an interview and evaluation process, to document plaintiff's concerns for his safety in an involuntary double cell-confinement.

23. Plaintiff States, the defendant Bailey failed to place in

the record the mental and emotional anxiety statements made by plaintiff, of the fears that he might be victimized living in a cell with another person.

24. Plaintiff states, defendant Blake consistently over plaintiff request for single housing, created reckless and dangerous circumstance, Defendants created emotional and mental anguish to the plaintiff, when over the course of approximately 6 to 8 months he deliberately moved inmates in and out of plaintiff cell without a capability scheme or following D.O.C. Policy for involuntary double celling.

25. As a direct and proximate result of the aforesaid acts of negligence, Plaintiff was compelled to file numerous complaints on both the institutional and Central Headquarters, and had family write letters on his behalf, expressing their concern for plaintiff's safety, and the mental anguish they were experiencing because of the previous occasions when plaintiff had been assaulted. Plaintiff is now been retaliated against and threaten by Defendant Patrick, Britton, and Blake

26. Plaintiff avers, defendants Patrick, Britton, and Blake only after plaintiff filed grievances and had family intervene on his behalf, was he moved from his original housing unit by defendants Blake, Britton, and Patrick, for no penal-logical objective.

27. Plaintiff states, that he's been arbitrarily disenfranchised from single celling policies, and discriminated against by the defendants, Patrick, Britton, Blake and Bailey, because of his longevity of confinement, and non-violent behavior.

28. Plaintiff states, defendants Patrick, Britton, Blake and Bailey, through arbitrary imposition of D.O.C. policies, creates

unsanitary living environments for those who in-voluntarily double cell, and creates undue stress among incompatible individuals, to fosters violence and physical attacks.

29. The recklessness, carelessness and negligence of defendants Patrick, Britton, Blake and Bailey, consisted, Inter Alia, of the following:

- A. engaging in un-authorized practices forbidden by The Department of Correction, (DOC) policies and directives.
- B. failing to adhere to safety protocol, as established by DOC policies and directives for in-voluntary double celling.
- C. operating a facility where policies and practices promotes violence and incompatible double celling.
- D. failing to establish mandated criteria for single celling of life sentenced and long term prisoners'.
- E. failing to comply with policies and procedures required under involuntary double celling, when it places lives in danger.
- F. Such other acts or omissions as may be revealed in the course of discovery, or at trial of this case.

30. Plaintiff states, because the defendants, Patrick, Britton and Blake, choose to maintain hazardous overcrowding conditions to avoid implementing D.O.C. philosophical opposition to double celling, by creating single cell occupancy, they've placed plaintiff's life in danger of serious bodily harm, by forcing him under threats and retaliation into involuntarily double celling on permanent basis.

31. Plaintiff states, the defendants, Patrick, Britton and Blake

compelled plaintiff on several occasions to be confined in double occupancy without the benefit of screening, interview, or evaluation for periods exceeding 30 days, under both Administrative and Disciplinary Custody, against DOC policies.

32. Plaintiff states that the defendants Patrick, Britton, Blake and Bailey, failed to review plaintiff vulnerability to being a victim of assaults and attacks by other prisoners.

33. Plaintiff avers, that the defendants, Patrick, Britton, and Blake, arbitrarily provide single cells to inmates without Z-Codes and without the benefit of established non-Z-Code single celling criteria.

34. Plaintiff avers, that the actions and policies employed by the defendants, Patrick, Britton, Blake and Bailey, violated 18 Pa. C.S.A. §2705, Recklessly endangering another person.

35. Plaintiff avers, that the suspension of D.O.C, policies arbitrarily, allows 18 Pa. C.A.S. §2703 and §2704, Assault by a Prisoner and Assault by a Life Sentenced Prisoner, to be disproportionately and arbitrarily applied, in an in-voluntary double celling situation, without proper screening and evaluation procedures in place.

36. Plaintiff avers, that because defendants, Patrick and Britton chooses to maintain dangerously over-crowded conditions, they've created a hostile and agitated atmosphere, by depleting conveniences and sufficient accommodations, that meet the requirements of safety to the population.

37. Plaintiff states, the defendants, Patrick, Britton and Blake

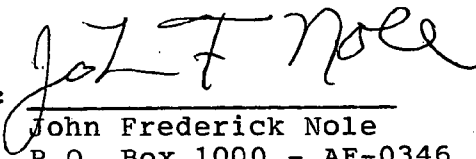
discriminated against him insofar as, they've allowed single cell housing to individuals without a Z-Code, and with significant less time of total confinement than plaintiff 37 years, and thus voided the grandfather policies of the DOC, forbidding losing, of things previously allowed by the DOC, including single cell living.

38. Due to the Defendants' actions, they've violated the aforementioned statutes, acting under the color of law. They've caused plaintiff to be subject to bodily harm. They have discriminated against plaintiff, and because of arbitrary practices, has caused him suffer mental and emotional anguish. They have overly punished him through being disenfranchised because of the significant amount of time he's spent in and under total confinement, by allowing new procedures to be applied retroactively and invalidating previously establish rules and policies, without a penal-logical objective.

WHEREFORE, Plaintiff, John Frederick Nole, demand judgment against the Defendants, George Patrick, Rendell Britton, Frazier Blake, and John Bailey, in an amount in excess of Five Thousand Dollars, (\$5,000.00), and any other such negotiated terms deem appropriate for settlement of damage done to plaintiff by the defendants in this instant matter.

DATE: April 30, 2007

BY:


John Frederick Nole
P.O. Box 1000 - AF-0346
Houtzdale, Pa. 16698

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,	:	CIVIL ACTION-LAW
Plaintiff	:	
	:	
Vs.	:	No.
	:	
GEORGE W. PATRICK,	:	
RENDALL BRITTON	:	
FRAZER BLAKE	:	
JOHN BAILEY	:	
Defendants	:	

PROOF OF SERVICE

I John Frederick Nole, pro se, do hereby certify that I have served upon the below listed individuals a true copy of this attached Civil Complaint.

I have forwarded eight (8) copies of this document, sufficient for the court and service upon each individual defendant, by placing them in a First Class Mail Box at Houtzdale - P.O. Box 1000 - Houtzdale, Pa. 16698-1000, on the below listed date, and forwarding it to the Clearfield County Courthouse - for service upon the following individuals:

George W. Patrick, Superintendent
SCI- Houtzdale
P.O. Box 1000
Houtzdale, Pa. 16698-1000

Rendall Britton, Facility Manager
SCI-Houtzdale
P.O. Box 1000
Houtzdale, Pa. 16698-1000

Frazer Blake, Unit Manager
SCI-Houtzdale
P.O. Box 1000
Houtzdale, Pa. 16698-1000

John Bailey, Counslor
SCI-Houtzdale
P.O. Box 1000
Houtzdale, Pa. 16698-1000

All the defendants mentioned in this suit are available, Monday thru Friday at the addresses indicated between the hours of 9:00 p.m. and 4:00 p.m.

Respectfully submitted,

John F. Nole
John Frederick Nole

P.O. Box 1000 - AF-0346

Houtzdale, Pa. 16698-1000

DATE: April 30, 2007

FILED

MAY 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

JOHN FREDERICK NOLE,
Plaintiff

vs.

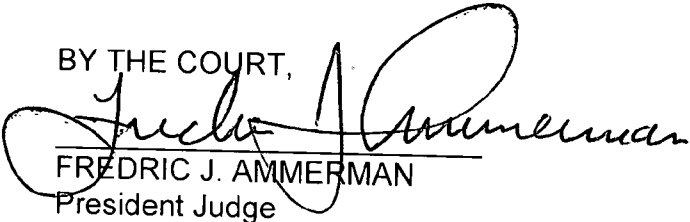
GEORGE W. PATRICK,
RENDALL BRITTON,
FRAZER BLAKE,
JOHN BAILEY
Defendants

*
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* NO. 07-701-CD
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ORDER

NOW, this 2nd day of May, 2007, the Court being in receipt of the Plaintiff's *pro se* Application to Proceed *In Forma Pauperis* and Complaint; upon the review of the Plaintiff's Complaint and the Court being satisfied that the same is frivolous and fails to state a cause of action that can be litigated in the Court of Common Pleas, it is the ORDER of this Court that the Application for Proceed *In Forma Pauperis* be and is hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

MAY 02 2007

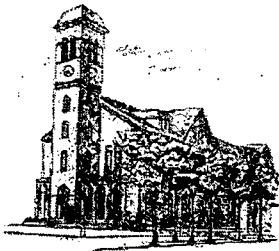
014200/4

William A. Shaw
Prothonotary/Clerk of Courts

2 CENT TO FILE

W/IFP DENIAL

LETTER



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

MAY 2, 2007

JOHN FREDERICK NOLE
AF-0346
P.O. BOX 1000
HOUTZDALE, PA 16658

DEAR MR. NOLE:

PLEASE BE ADVISED THAT YOUR PETITION TO PROCEED IN FORMA PAUPERIS IN THE ABOVE CASE HAS BEEN DENIED BY THE COURT. A CERTIFIED COPY OF THE COURT'S ORDER IS ENCLOSED. ACCORDING TO THE RULES OF CIVIL PROCEDURE NO. 236, THE PROTHONOTARY'S OFFICE MAY STRIKE YOUR FILING IF PAYMENT IS NOT RECEIVED IN FULL. IF STRIKEN YOU MAY NO LONGER PROCEED WITH THE ACTION WITHOUT LEAVE FROM THE COURT FOR GOOD CAUSE.

THIS ACTION WILL BE STRIKEN AFTER TEN (10) WORKING DAYS FROM THE DATE OF THIS LETTER IF PAYMENT IN THE AMOUNT OF \$85.00 HAS NOT BEEN RECEIVED.

SINCERELY,

WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

ENCLOSURE

IN THE COURT OF COMMON PLEAS
FOR CLEARFIELD COUNTY PENNSYLVANIA

JOHN FREDERICK NOLE,
Plaintiff

Vs.

GEORGE W. PATRICK,
RENDALL BRITTON
FRAZER BLAKE
JOHN BAILEY

Defendants

CIVIL ACTION-LAW

No. 2007-701-CD

APPLICATION TO PROCEED IN
FORMA PAUPERIS- SUPPORTING
DOCUMENTATION AND ORDER

FILED

MAY 02 2007

01420/2
William A. Shaw
Prothonotary/Clerk of Courts

2 chambers to
file

I, John Frederick Nole, declare that I am the plaintiff in the above entitled proceeding; that in support of my request to proceed without being required to pre-pay fee, cost or give security thereof, I state that because of my poverty, I am unable to pay the cost of said proceedings or give security. therefore; that I believe I am entitled to relief.

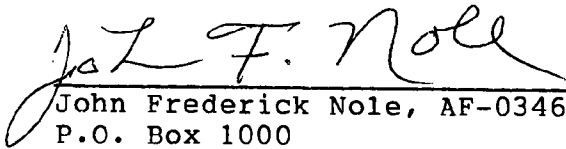
In further support of this application:

1. I am employed: (a) My wages are approximately \$65.00 per month through a prison compensation program.
2. In the past six months I have received small gifts from friends and family to support the necessities I require, averaging approx. \$40.00.
3. I have not checking or saving accounts. I have approx. \$30.00 in my inmates prison account.
4. I don't have nor do I own any Real Estate, Stocks, Bonds, Notes, automobiles, or other valuable property.
5. There are no individuals who rely on me for support.

I declare under penalty of perjury, that the foregoing is

true and correct:

DATE: 4-30-07


John Frederick Nole, AF-0346
P.O. Box 1000
Houtzdale, Pa. 16698-1000



Commonwealth Court of Pennsylvania

Kristen W. Brown
Prothonotary
Michael Krimmel, Esq.
Chief Clerk of Commonwealth Court

July 9, 2008

Irvis Office Building, Room 624
Harrisburg, PA 17120
717-255-1652

Certificate of Remittal/Remand of Record

TO:

RE: Nole v. Patrick et al

No. 1779 CD 2007

Trial Court/Agency Dkt. Number: 2007-00701-CD

Trial Court/Agency Name: Clearfield County Court of Common Pleas

Intermediate Appellate Court Number:

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
trial court record	November 26, 2007	1
Date of Remand of Record: 7/9/2008		

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and
returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need
not acknowledge receipt.

Signature

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

Printed Name

7/11/08

Date

FILED
m 1037/61
JUL 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

07-701-CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Frederick Nole,

Appellant

v.

George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

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No. 1779 C.D. 2007

Submitted: February 8, 2008

FILED

m/12:3501
JUL 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

(610)

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: May 15, 2008

John Frederick Nole (Nole) appeals pro se from a final order of the Court of Common Pleas of Clearfield County (trial court) dismissing his Complaint. In challenging the dismissal, Nole also challenges the dismissal of his Motion for Preliminary Injunction, in which he asked the court to enjoin the Department of Corrections (Department) from placing two inmates in a cell designed to hold one inmate. In the final order, the trial court dismissed with prejudice Nole's Complaint against four employees of the Department who worked at SCI-Houtzdale: George W. Patrick (Patrick), Rendall Britton, Frazer Blake (Blake) and John Bailey (Bailey)

(collectively, Respondents). The Complaint accused Respondents of recklessly endangering Nole by requiring him to share a cell with a cellmate.

Nole has been an inmate for thirty-seven years. For thirty-two of those years he was housed in a single cell without a cellmate (single-cell status, or single-celling). In September 2003, Nole was transferred to SCI-Houtzdale and assigned to a cell with a cellmate (double cell status, or double-celling). In late 2006, Nole requested that he be evaluated for single-cell status. Officials at SCI-Houtzdale denied Nole's request. Nole appealed, but did not receive a response. Bailey later informed Nole that he did not meet the criteria for single-cell status, and that he had harmed his case by placing forged documents in a counselor's file in an apparent attempt to manipulate the housing evaluation. Nole appealed this decision to the Office of Inmate Grievances and Appeals, which subsequently denied his appeal.

In May 2007, Nole filed a Complaint against the Respondents alleging that, by double-celling him, they had recklessly and negligently endangered his life. Nole made other allegations, including that: the Department's policy of double-celling inmates created a volatile atmosphere resulting in conflict and retaliation between cellmates; the policy is discriminatorily enforced; Nole himself should qualify for single-cell status based on his seniority, the length of time he has spent without a cellmate, and good behavior; and Respondents have failed to follow the Department's housing policy and its compatibility procedures.¹ Nole argued that by failing to

¹ A Department Administrative Memorandum on double-celling states that the Department is "philosophically opposed" to double-celling inmates. (Memorandum from Glen R. Jeffes, Department Commissioner, to Department Superintendents 1 (October 8, 1985) (Housing Memo).) The Housing Memo states that double-celling is a result of overcrowding and will continue until there is sufficient space to single-cell inmates. (Housing Memo at 1.) However, the Housing

adhere to the Department's compatibility standards, Respondents are double-celling inmates who should not be housed together, for example violent inmates with non-violent inmates.² Nole argued that as a result of this failure, he fears being victimized by a cellmate. Nole alleged that Respondents have retaliated against him for his repeated complaints regarding their failure to adhere to the Department policies on double-celling. Finally, Nole alleged that Respondents violated Sections 2703, 2704

Memo provides that when double-celling is necessary, an institution should attempt to choose inmates who will be compatible for involuntary double-celling. (Housing Memo at 2.) The memo lists the following factors for consideration:

- a. Familial relationship, e.g., brothers, cousins
- b. Age
- c. Race and ethnic biases of the inmates to be housed together
- d. Interests
- e. Geographic identity
- f. Length of sentence
- g. Program assignment (job, education, etc.)
- h. Program level
- i. Security needs (escape, substance abuse, violence, deviate sexual acts, etc.)
- j. Behavioral disposition and attitude
- k. Group identification (gangs, etc.)
- l. Sophistication (prior incarceration, etc.)
- m. Other factors deemed appropriate by the institution.

(Housing Memo at 2-3.) Additionally, the Housing Memo lays out the following procedure for double-celling inmates: (1) inmates are identified as candidates for double-celling either by staff or by the inmate's own request; (2) staff interview the inmate to determine his willingness and possible issues; (3) staff approve the inmate for double-celling after consideration of the relevant criteria; (4) the inmate is oriented and informed of the rules he is required to follow with regard to the double-celling and of the procedures for requesting that his double-celling be terminated; (5) monitoring, including supervision and interviews, to identify and correct problems. (Housing Memo at 3.)

² Specifically, Nole alleged that Respondents place "young with old; smokers with non-smokers, muslims [sic] with christians [sic], educated with uneducated, diseased with healthy" (Complaint ¶ 21.)

and 2705 of the Crimes Code, 18 Pa. C.S. §§ 2703, 2704-05³ by denying him single-cell status while single-celling less senior inmates.

On July 2, 2007, Respondents filed Preliminary Objections to Nole's Complaint. In response to Nole's civil claims for recklessness, negligence, and infliction of emotional distress the Respondents raised sovereign immunity as a defense. In response to Nole's claims that Respondents violated provisions of the Crimes Code, Respondents objected that, per Rule 506 of the Pennsylvania Rules of Criminal Procedure, private criminal complaints must be submitted to a Commonwealth attorney for approval before the charge may be brought to a trial court. With regard to other various allegations in Nole's Complaint, Respondents objected that such allegations were insufficiently pled, as Nole did not specify what statute or statutes they had violated. Respondents also objected that Nole had no constitutionally-protected right to single-cell status. Finally, Respondents objected that life-sentenced inmates were not a protected class and that Nole had failed to allege facts which would show that he was being treated disparately from similarly-situated inmates.⁴

On July 6, 2007, Nole filed a Motion to Amend Complaint, without attachments, seeking the trial court's permission for leave to amend his Complaint. Without ruling on Nole's motion, the trial court ordered both parties to file briefs

³ These sections are provisions under the Crimes Code. Section 2703 defines the crime of "[a]ssault by prisoner"; section 2704 defines the crime of "[a]ssault by life prisoner"; and section 2705 defines the crime of "[r]ecklessly endangering another person." 18 Pa. C.S. §§ 2703, 2704-05.

⁴ Although Nole only enumerated one count in his Complaint, he made a number of different arguments and allegations. Respondents' Preliminary Objections address these arguments as well as the enumerated count.

regarding the Preliminary Objections within thirty days. Nole did not file a brief in opposition to Respondents' Preliminary Objections. Instead, on July 30, 2007, he filed an Amended Complaint and Motion for Preliminary Injunction. The allegations of the Amended Complaint were nearly identical to those of the original Complaint; however, Nole did attach ten exhibits, labeled A through J.⁵

⁵ Exhibit A consists of documents regarding Nole's request to be classified as a "Z-code," a classification requiring single-cell status. These documents include: Nole's written request that his classification be reevaluated; an Official Inmate Grievance form stating that Nole's request to be reevaluated for Z-Code status had been unreasonably rejected; a grievance rejection form indicating that Nole had provided "nothing to substantiate the need for Z code status"; and a letter from Nole to Patrick, dated December 13, 2006 requesting that Nole's grievance be allowed to proceed.

Exhibit B is a copy of the December 14, 2006 letter from Nole to Patrick which was included in Exhibit A.

Exhibit C consists of documents relating to a subsequent grievance by Nole objecting to the denial of his request to be reevaluated for Z-Code status. These documents include: Nole's Official Inmate Grievance form; a Grievance Rejection form stating that the issue presented by Nole's grievance had already been addressed; a letter from Nole to Patrick, dated December 29, 2006, objecting to the denial of Nole's grievances; a letter from Patrick to Nole, dated January 4, 2007, stating that he agreed with the disposition of Nole's grievances; a letter from Nole to Sharon M. Burks, Department's Chief Grievance Officer, dated January 8, 2007, requesting that his grievances be processed; and a letter from the Department Secretary's Office of Inmate Grievances & Appeals to Nole stating that Nole had failed to fully comply with Department regulation DC-ADM 804, which requires that the appeal of a grievance to final review must include photocopies of, among other documents, the Initial Review.

Exhibit D is the Housing Memo.

Exhibit E consists of two letters. The first is from Nole's sister, Loretta Nole, to Jeffrey Beard (Beard), Secretary of the Department, dated December 20, 2006, disputing that Nole is an escape risk, and arguing that he should be single-celled. The second is from Beard to Loretta Nole, dated January 8, 2007, informing her that Nole's Z-Code determination was made by SCI-Houtzdale personnel and that she should contact them.

Exhibit F consists of two letters. The first is from Nole's wife, Susan Beard-Nole (Beard-Nole) to Beard, dated April 4, 2007, discussing generally the inequity of Nole not being single-celled, as well as perceived problems with Department's policy regarding drug testing. The second is a letter from Beard to Beard-Nole, dated April 16, 2007, stating that Nole did not meet criteria to be single-celled, and that the Department's drug testing procedures are adequate.

Exhibit G, likewise, consists of two letters. The first is from Loretta Nole to Patrick, dated March 21, 2007, inquiring why Nole was single-celled without being classified as a Z-Code in previous institutions, while officials at SCI-Houtzdale would not single-cell him unless he was

On July 31, 2007, Respondents filed their brief in support of their Preliminary Objections. On August 6, 2007, Nole filed a Motion to Moot Previous Filings in an attempt to compel Respondents to respond to his Amended Complaint. On August 8, 2007, the trial court sustained Respondents' Preliminary Objections and dismissed Nole's Motion for Preliminary Injunction and dismissed, with prejudice, Nole's Complaint. The trial court found that no legitimate purpose would be served by permitting Nole to amend his Complaint. Nole brings the present appeal.⁶

In his brief to this Court, Nole argues that: (1) the trial court abused its discretion by dismissing his Complaint without allowing him to amend it; (2) the trial court showed bias against him by improperly adopting the statements of law and arguments contained in Respondents' brief on their Preliminary Objections; (3) the

classified as a Z-Code. The Second is from Patrick to Loretta Nole, dated April 4, 2007, explaining that space in the prison is limited and that inmates are only single-celled when necessary, in order to conserve space.

Exhibit H is a letter from Nole to Blake, dated March 4, 2007, arguing that Nole deserves to be single-celled based on his long incarceration without a cellmate, his service to prison society and his "relatively good behavior." A signed, handwritten note from Blake to Nole, dated March 5, 2007 at the bottom of the letter, informs Nole that he will not be single-celled.

Exhibit I is a form request from Nole to Patrick, dated March 7, 2007, asking why he was moved off his unit soon after requesting to know why he did not qualify for single-cell status. A reply from Patrick on the form states, "[a]ny 'contributions' you might make are overshadowed by your neediness. Due to the overpopulation I do not have the luxury of handing out single cells. You don't qualify for a Z-Code. Perhaps you will have better luck at another facility." (Complaint, Ex. I.)

Exhibit J is a table of custody levels and program codes correlated with custody levels. Notably, both A- and Z-Codes provide for single-cell assignments. A-Codes are long-term offenders who are subject to minimum or medium supervision. Single-cell status for A-Codes is restricted based on availability and good behavior.

⁶ Where a trial court dismisses a complaint based on preliminary objections, this Court's review is limited to determining whether there has been an error of law or an abuse of discretion. Jones v. City of Philadelphia, 893 A.2d 837, 842 (Pa. Cmwlth. 2006).

trial court erred in not allowing discovery; and (4) the trial court violated Rule 1531 of the Pennsylvania Rules of Civil Procedure by failing to hold a hearing on Nole's Motion for Preliminary Injunction prior to dismissing it.⁷

We will first address Nole's argument that the trial court erred in dismissing his Complaint without allowing discovery where disputed facts were at issue. We note that Nole did not request discovery prior to the dismissal of his Complaint. We fail to see how the trial court erred in not granting Nole discovery he never requested.

Second, Nole argues that the trial court erred by not permitting him to amend his Complaint. Citing Miller v. Stroud, 804 A.2d 749 (Pa. Cmwlth. 2002) and Mistick, Inc. v. City of Pittsburgh, 646 A.2d 642 (Pa. Cmwlth. 1994), Nole argues that because amendments to pleadings are to be liberally permitted, and because his amendment would not have surprised or prejudiced Respondents, the trial court abused its discretion by not permitting him to amend his complaint. We disagree.

Rule 1028(c) of the Pennsylvania Rules of Civil Procedure states that "[a] party may file an amended pleading *as of course within twenty days* after service of a copy of preliminary objections." Pa. R.C.P. No. 1028(c)(1) (emphasis added). Here, Nole received Respondents' Preliminary Objections on July 3, 2007. Under Rule 1028, he had until July 23, 2007 to file his Amended Complaint as of course. However, he instead filed a motion to amend his complaint. Nole did not file his Amended Complaint until 7 days after the 20 day period had run. If a party does not file an amendment as of course within the 20 day period permitted by Rule 1028, then the

⁷ In the interest of clarity we discuss Nole's arguments in a different order than he lays them out in his brief.

general rule on amendment, Pa. R.C.P. No. 1033, applies. Rule 1033 states that a party may amend his pleading with the “consent of the adverse party or by leave of court” Pa. R.C.P. No. 1033. While the decision whether to grant leave to amend is within the discretion of the trial court, and will not be overturned absent a “clear abuse of discretion,” leave to amend should generally be allowed, particularly where preliminary objections are sustained. Koresko v. Farley, 844 A.2d 607, 618 (Pa. Cmwlth. 2004); Jones, 893 A.2d at 846; see also Pa. R.C.P. No. 126 (stating that the Rules of Civil Procedure must be liberally construed to promote justice and judicial efficiency; procedural defects which do not impair parties’ substantial rights may be disregarded). However, it is not an abuse of discretion for a court to deny leave to amend where it appears reasonably likely that such amendment will be futile. Koresko, 844 A.2d at 618.

Here, the trial court dismissed Nole’s Complaint with prejudice, stating that permitting Nole to amend would serve no legitimate purpose. After examining Nole’s Amended Complaint, the amendment he alleges the trial court should have allowed him to make, we are in a position to definitively confirm that allowing Nole to amend would not only *likely* be futile, but would have, in fact, been futile.

Respondents put forth five preliminary objections. They first raised sovereign immunity as a defense to Nole’s allegations of reckless endangerment, negligence, and infliction of emotional distress. Article I, Section 11 of the Pennsylvania Constitution, provides in part that “[s]uits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.” Pa. Const. art I, § 11. Pursuant to Section 11, the Legislature has directed

that "the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. C.S. § 2310. While the Legislature has enumerated several exceptions under which Commonwealth parties may be liable,⁸ the allegations of Nole's Complaint and Amended Complaint do not even arguably implicate these exceptions. Nowhere in his Complaint or Amended Complaint does Nole allege facts that would indicate that Respondents were not acting within the scope of their respective duties when they took the actions of which Nole complains. Indeed, the gravamen of Nole's Complaint is that he was harmed by actions the Respondents performed in the course of their duties as officials at SCI-Houtzdale. For this reason, this objection would have been fatal to these claims even as they were set forth in Nole's Amended Complaint and, therefore, in regard to this preliminary objection, permitting Nole to amend would have been futile.

Respondents' second preliminary objection is that, under Pa. R. Crim. P. 506, a private criminal complaint must be submitted to a Commonwealth attorney for approval before it may be filed in a trial court. In both his Complaint and his Amended Complaint Nole alleges that Respondents violated provisions of the Crimes Code. Nole does not allege, either in his Complaint or in his Amended Complaint, that he submitted these criminal charges to a Commonwealth attorney. Even had the trial court allowed Nole to amend his Complaint, Nole's charges against the

⁸ These exceptions include: vehicle liability; medical professional liability; care, custody and control of personal property; commonwealth real estate, highways and sidewalks; potholes and other dangerous conditions; care, custody or control of animals; liquor store sales; National Guard activities; and toxoids and vaccines. 42 Pa. C.S. § 8522(b).

Respondents would have failed under Rule 506. Therefore, leave to amend would have been futile.

Respondents' third preliminary objection states that Nole did not plead with sufficient specificity his allegations that Respondents violated Department policy. Pa. R.C.P. No. 1019 requires that a complaint include all material facts necessary to support a claim. Here, Nole broadly alleges that Respondents violated the Department policy laid out in the Housing Memo.⁹ Nole does not, however, specify *how* Respondents violated this policy. For example, Nole did not allege, in his Complaint or his Amended Complaint, that he is being or has been housed with a young inmate, a violent inmate, or an inmate with incompatible religious beliefs. Nor does either complaint allege that Nole has suffered any concrete harm as a result of the Respondents' alleged failure to follow its policy. Accordingly, permitting Nole to amend his Complaint with regard to this objection would have been futile.

Respondents' fourth and fifth preliminary objections argue that, insofar as Nole makes constitutional claims, these claims fail because there is no constitutionally-protected right to single-cell status and because individuals sentenced to life imprisonment do not constitute a protected class. As Respondents pointed out in their Preliminary Objections, the United States Supreme Court held in Rhodes v. Chapman, 452 U.S. 337, 347-48 (1981), that double-celling, in and of itself, does not violate the Eighth Amendment prohibition against cruel and unusual punishment.

⁹ Nole's allegations included violations such as housing inmates of different religions together and old inmates with young inmates. We note that these "violations" were not violations of the policy's more mandatory provisions, but rather related to *factors* that administrators were instructed to *consider*. (See Housing Memo at 2.)

Likewise, relying on Rhodes, this Commonwealth's Supreme Court, in Jackson v. Hendrick, 509 Pa. 456, 503 A.2d 400 (1986), held that single-celling was not constitutionally required. Rather, the Court held that, in determining whether prison conditions violate the Eight Amendment, a court must determine whether those conditions "taken as a whole, either inflict unnecessary or wanton pain or amount to grossly disproportionate punishment for the crime for which the prisoner has been incarcerated." Id. at 469, 503 A.2d at 406. As discussed above, Nole's Complaint and Amended Complaint do not articulate any concrete facts which would indicate that he is actually being subjected to dangerous or otherwise unconscionable conditions. Therefore, because double-celling does not inherently violate the Eighth Amendment, Nole's claims on this basis fail and amendment of his Complaint would have been futile. Likewise, insofar as Nole bases any of his constitutional claims on the theory that he is being discriminated against as a life-sentenced prisoner, he does not cite, nor was this Court able to locate, any controlling case holding life-sentenced inmates to be a protected class. Moreover, Nole did not allege, either in his Complaint or his Amended Complaint, any specific facts which would show that he was being treated differently from other inmates similarly situated to him; therefore, the trial court did not err in finding that leave to amend would have been futile with regard to these claims. For these reasons, the trial court did not err in withholding from Nole leave to amend his Complaint.

We next consider Nole's argument that the trial court erred by adopting in whole the statements of law and arguments contained in Respondents' Preliminary Objections. In its Opinion, giving justification for its decision to uphold Respondents' Preliminary Objections, the trial court stated only that "[t]his Court has

reviewed the statements of law and precedent set forth in the [Respondents'] Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein." (Trial Ct. Op. at 3.) Nole argues that this adoption by the trial court held him to a higher standard than that to which a pro se litigant should be held and violated the Supreme Court's decision in Commonwealth v. Williams, 557 Pa. 207, 732 A.2d 1167 (1999). We disagree on both points.

While a court should not penalize a pro se litigant for minor procedural infractions which do not affect a party's substantive rights, a pro se litigant is still subject to the same rules of procedure as a party represented by counsel and has no greater right to be heard. Peters Creek Sanitary Authority v. Welch, 545 Pa. 309, 315 n.5, 681 A.2d 167, 170 n.5 (1996); Cassell v. Shellenberger, 514 A.2d 163, 165 (Pa. Super. 1986). Moreover, a party who represents himself assumes, to a degree, "the risk that his lack of legal training will prove his undoing." Welch, 545 Pa. at 315 n.5, 681 A.2d 167, 170 n.5 (citing Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985)). By adopting the legal arguments of Respondents' Preliminary Objections, the trial court was not punishing Nole for representing himself, but was recognizing that, in fact, Respondents' arguments conformed to the law and were legally correct.

Nole's reliance on Williams for the principle that it is error for the trial court to adopt the argument in a party's brief or filing as its opinion is misplaced. The Supreme Court's ruling in Williams turned on the fact that Williams involved a trial

court's post-conviction review of a death sentence, as the Court explicitly acknowledged:

this Court has not prohibited the adoption of portions of a party's arguments in support of a judicial disposition. Certainly Pa. R.A.P. No. 1925(a) provides a degree of flexibility in this regard, permitting trial judges, where appropriate, to specify places in the record where reasons may be found for their decisions. We cannot, however, in this post-conviction case involving a review of the propriety of a death sentence, condone the wholesale adoption by the post-conviction court of an advocate's brief.

Williams, 557 Pa. at 224-25, 732 A.2d at 1176. Indeed, as the Court in Williams noted, it is generally permissible for a trial court to adopt a party's argument as the court's opinion, so long as the court specifies the location in the record where the reasoning for the court's decision may be found. See, e.g., Miller Development Corp. v. Union Township Municipal Authority, 666 A.2d 391, 395 (Pa. Cmwlth. 1995) (holding that trial court did not err in adopting by reference the arguments and statements of law in a party's brief as the basis for its decision). Here, the trial court specified the location in the record where the reasoning for its decision could be found: Respondents' Preliminary Objections. As we held in Miller Development Corp., this sort of incorporation by reference, while perhaps not ideal, is not error.

Finally we examine Nole's argument that the trial court erred in dismissing his Motion for Preliminary Injunction without holding a hearing or considering the immediate, irreparable injuries that might have resulted from double-celling. In his Motion for Preliminary Injunction, Nole asked the trial court to enjoin Respondents from double-celling inmates without following the compatibility guidelines outlined in the Housing Memo.


In order to receive a preliminary injunction, the moving party has the burden of showing that each of the following elements is satisfied: (1) "the activity of the defendant is actionable"; (2) "[t]he relief is necessary to prevent immediate and irreparable harm which cannot be compensated by damages"; (3) [g]reater injury will result by refusing it than by granting it"; and (4) "[g]ranteeing the injunction restores the parties to the status as it existed immediately prior to the alleged wrongful conduct." Hanover Assoc. v. Township of Hanover, 707 A.2d 1178, 1182 (Pa. Cmwlth. 1998) (citing Valley Forge Historical Soc'y v. Washington Mem'l Chapel, 493 Pa. 491, 500, 426 A.2d 1123, 1128 (1981)); Norristown Mun. Waste Auth. v. West Norriton Township Mun. Auth., 705 A.2d 509, 511-12 (Pa. Cmwlth. 1998).

In support of his Motion for Preliminary Injunction, Nole attached four affidavits from inmates at SCI-Houtzdale. These affidavits described the inmates' experiences with double-celling at SCI-Houtzdale. The affiants stated that, as a result of Respondents' failure to follow the Department's compatibility guidelines, they experienced mental and emotional stress due to the potential for violence. While the affidavits discussed the inmates' fears of violence, they did not provide any objective basis for the trial court to conclude that immediate and irreparable harm was likely to occur. Therefore, Nole failed to satisfy the second element set forth above.

Nole argues that, pursuant to Pa. R.C.P. No. 1531, the trial court was required to hold a hearing on his Motion for Preliminary Injunction. This is incorrect. Rule 1531 does not require a trial court to hold a hearing on every motion for preliminary injunction. Sossong v. Shaler Area School District, ___ A.2d ___, No. 979 C.D.

2007, 2008 WL 596766, at *4 (Pa. Cmwlth., Filed March 6, 2008) (“Although a hearing is preferred, there is no absolute duty on a court to grant an evidentiary hearing on an application for a preliminary injunction.”); Pa. R.C.P. No. 1531 (“A court shall *issue* a preliminary or special injunction only after written notice and a hearing”) (emphasis added). Here, the trial court properly dismissed Nole’s Motion for Preliminary Injunction where he failed to show that immediate, irreparable harm would result if the injunction were not granted. Additionally, as discussed above, Nole’s claims lacked merit, providing the trial court another basis upon which to deny his Motion for Preliminary injunction.

For these reasons, we affirm the decision of the trial court.



RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Frederick Nole,

Appellant

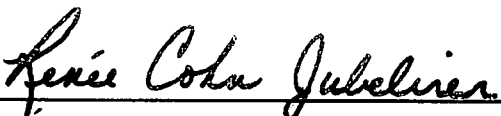
v.

George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

No. 1779 C.D. 2007

ORDER

NOW, May 15, 2008, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby **affirmed**.


RENÉE COHN JUBELIRER, Judge

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

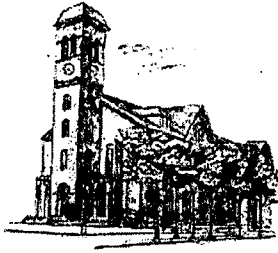
No. 07-701-CD

John Frederick Nole

VS.

George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	05/02/07	IFP Petition, Re: Civil Complaint	02
02	05/02/07	Order, Re: IFP Denied	02
03	05/11/07	Civil Complaint	10
04	06/18/07	Praecipe for Entry of Appearance	02
05	07/02/07	Preliminary Objections	11
06	07/06/07	Motion to Amend Complaint	02
07	07/10/07	Order, RE: briefs to be submitted	01
08	07/30/07	Amended Complaint with Proof of Service	37
09	07/30/07	Plaintiff's Motion for Preliminary Injunction with Certificate of Service	08
10	08/07/07	Motion to Moot Previous Filings	03
11	08/08/07	Order, Re: Motion for Injunction Relief Dismissed	01
12	08/09/07	Opinion and Order; Plaintiff's Complaint Dismissed with prejudice	06
13	08/23/07	Application to Proceed In Forma Pauperis	01
14	08/28/07	Application for Leave In Forma Pauperis	02
15	08/28/07	Notice of Appeal	02
16	08/30/07	Order, Re: In Forma Pauperis Denied	01
17	09/10/07	Application in Leave to Appeal In Forma Pauperis Pursuant to Pa.R.A.P. 553	03
18	09/10/07	History of Appeal Process	02
19	10/17/07	Sheriff Return	05
20	11/20/07	Commonwealth Docket Sheet, Docket Number 1779 CD 2007	04



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

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COPY

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Clearfield, PA 16830

John Frederick Nole
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SCI Houtzdale
PO Box 1000
Houtzdale, PA 16698-1000

Michael J. McGovern, Esq.
PA Dept. of Corrections
55 Utley Drive
Camp Hill, PA 17011

John Frederick Nole
Vs.
George W. Patrick, Rendall Britton, Frazer Blake, and John Bailey

Court No. 07-701-CD; Commonwealth Court No. 1779 CD 2007

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on November 20, 2007.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 09/17/2007

Clearfield County Court of Common Pleas

User: GLKNISLEY

Time: 10:01 AM

ROA Report

Page 2 of 2

Case: 2007-00701-CD

Current Judge: No Judge

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
08/17/2007	X Received from Commonwealth Court of PA: Copies of Notice of Appeal received by Comm. Court 8-14-07 and letter regarding omissions in Notice of Appeal	No Judge
08/21/2007	X Notice of Appeal, received from Plaintiff, (No Payment or order attached.)	No Judge
08/23/2007	(13) Application to Proceed In Forma Pauperis, filed by Plaintiff. 2 Cert. to Plaintiff	No Judge
	X Notice of Appeal, received from Commonwealth Court with Letter from Commonwealth Court.	No Judge
08/28/2007	(14) Application for leave In Forma Pauperis, filed by Plaintiff. 2 Cert. Plaintiff.	No Judge
	(15) Notice of Appeal, filed	No Judge
	Re: August 8, 2007, Order.	
08/30/2007	(16) Order, this 29th day of August, 2007, Plaintiff's request to proceed in forma pauperis is Denied. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Plff.	Fredric Joseph Ammerman
09/10/2007	(17) Application In Leave to Appeal in Forma Pauperis Pursuant to PA.R.A.P. 553, filed by s/ John Frederick Nole-plff. No CC.	No Judge
	(18) History of Appeal Process, filed by s/ John Frederick Nole-plff. No CC.	No Judge

Date: 09/17/2007

Clearfield County Court of Common Pleas

User: GLKNISLEY

Time: 10:01 AM

ROA Report

Page 1 of 2

Case: 2007-00701-CD

Current Judge: No Judge

John Frederick Nole vs. George W. Patrick, Rendall Britton, Frazer Blake, John Bailey

Civil Other

Date		Judge
05/02/2007	New Case Filed.	No Judge
	① Filing: IFP Petition RE: Civil Complaint. Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918858 Dated: 5/2/2007 Amount: \$.00 (Cash) 2 Cert. to Plaintiff. 2	No Judge
	② Order, filed 2 cert. to Plaintiff with IFP Denial Letter. NOW, this 2nd day of May, 2007, ORDER of this Court that the Application for Proceed In Forma Pauperis be and is hereby DENIED. 2	Fredric Joseph Ammerman
05/11/2007	③ Filing: Civil Complaint Paid by: Nole, John Frederick (plaintiff) Receipt number: 1918977 Dated: 05/11/2007 Amount: \$85.00 (Money order) filed by s/John F. Nole No CC 10	No Judge
06/18/2007	④ Praecipe For Entry of Appearance, filed on behalf of all Defendants, enter appearance of Michael J. McGovern, Assistant Counsel, Pennsylvania Department of Corrections. 1CC to Atty 2	No Judge
07/02/2007	⑤ Preliminary Objections, filed by s/Michael J. McGovern One CC Attorney McGovern 11	No Judge
07/06/2007	⑥ Motion to Amend Complaint, filed by Plaintiff. 1 Cert. to Plaintiff. 2	No Judge
07/10/2007	⑦ Order, this 10th day of July, 2007, Preliminary Objections shall be decided without oral argument. Both parties shall have no more than 30 days from this date to supply the Court with an appropriate brief on the issues. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Plff, SCI houtzdale; 1 1CC Atty. mcGovern	Fredric Joseph Ammerman
07/30/2007	⑧ Amended Complaint, filed by Plaintiff. 2 Cert. copies.	No Judge
	Proof of Service, filed by Plaintiff, Served copy of Amended Complaint on Asst. Counsel, Michael J. McGovern. 2 Cert. copies. 37	No Judge
	⑨ Plaintiff's Motion for Preliminary Injunction, filed by Plaintiff. 2 Cert. copies. Certificate of Service, filed by Plaintiff, 2 cert. copies. Served copy of Motion for Injunction Relief on Michael J. McGovern. 8	No Judge
08/07/2007	⑩ Motion to Moot Previous Filings, filed by Plaintiff 2 Cert. to Plaintiff. 3	No Judge
08/08/2007	⑪ Order NOW, this 8th day of August 2007, the Court being in receipt of the Plaintiff's pro se "Motion for Injunction Relief" and having reviewed the same; this Court being unaware of any statute or presedent which legally entitles an inmate in a state correctional institution to a single cell or to cell mate compatibility procedures and that the "Motion" fails to set forth a cause of action. Accordingly, it is the ORDER of this Court that the said "Motion" be and is hereby DISMISED. BY THE COURT: /s/ Frederic J. Ammerma, P. Judge. 1CC plff @ AF0346 SCI Houtzdale and 1CC Atty McGovern 1	Fredric Joseph Ammerman
08/09/2007	⑫ Opinion and Order, filed Cert. to Plaintiff, Atty. McGovern NOW, this 8th day of August, 2007, consistent with the Court's Opinion, it is the ORDER of this Court that the Plaintiff's Complaint be and is hereby dismissed with prejudice. 6	Fredric Joseph Ammerman
08/14/2007	X Notice of Appeal, received from Plaintiff. Sent Letter to Plaintiff requesting Payment of \$60.00 to Appellate Court and \$45.00 payment to Prothonotary	No Judge

FILED

NOV 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

John Frederick Nole

Vs.

Case No. 2007-00701-CD

George W. Patrick
Rendall Britton
Frazer Blake
John Bailey

FILED
m110:456H
NOV 28 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS

NOW, this 20th day of November, 2007, the undersigned, Prothonotary or Deputy Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania, the said Court of record, does hereby certify that attached is the original record of the case currently on Appeal.

An additional copy of this Certificate is enclosed with the original hereof and the Clerk or Prothonotary of the Commonwealth Court is hereby directed to acknowledge receipt of the Appeal Record by executing such copy at the place indicated by forthwith returning the same to this Court.

By: William A. Shaw
William A. Shaw, Prothonotary

Record, Etc. Received:

Date: _____

(Signature & Title)

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA
26 NOV 2007 08 24

07-701-CD

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Frederick Nole,

Appellant

v.

George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

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No. 1779 C.D. 2007

Submitted: February 8, 2008

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: May 15, 2008

John Frederick Nole (Nole) appeals pro se from a final order of the Court of Common Pleas of Clearfield County (trial court) dismissing his Complaint. In challenging the dismissal, Nole also challenges the dismissal of his Motion for Preliminary Injunction, in which he asked the court to enjoin the Department of Corrections (Department) from placing two inmates in a cell designed to hold one inmate. In the final order, the trial court dismissed with prejudice Nole's Complaint against four employees of the Department who worked at SCI-Houtzdale: George W. Patrick (Patrick), Rendall Britton, Frazer Blake (Blake) and John Bailey (Bailey)

(collectively, Respondents). The Complaint accused Respondents of recklessly endangering Nole by requiring him to share a cell with a cellmate.

Nole has been an inmate for thirty-seven years. For thirty-two of those years he was housed in a single cell without a cellmate (single-cell status, or single-celling). In September 2003, Nole was transferred to SCI-Houtzdale and assigned to a cell with a cellmate (double cell status, or double-celling). In late 2006, Nole requested that he be evaluated for single-cell status. Officials at SCI-Houtzdale denied Nole's request. Nole appealed, but did not receive a response. Bailey later informed Nole that he did not meet the criteria for single-cell status, and that he had harmed his case by placing forged documents in a counselor's file in an apparent attempt to manipulate the housing evaluation. Nole appealed this decision to the Office of Inmate Grievances and Appeals, which subsequently denied his appeal.

In May 2007, Nole filed a Complaint against the Respondents alleging that, by double-celling him, they had recklessly and negligently endangered his life. Nole made other allegations, including that: the Department's policy of double-celling inmates created a volatile atmosphere resulting in conflict and retaliation between cellmates; the policy is discriminatorily enforced; Nole himself should qualify for single-cell status based on his seniority, the length of time he has spent without a cellmate, and good behavior; and Respondents have failed to follow the Department's housing policy and its compatibility procedures.¹ Nole argued that by failing to

¹ A Department Administrative Memorandum on double-celling states that the Department is "philosophically opposed" to double-celling inmates. (Memorandum from Glen R. Jeffes, Department Commissioner, to Department Superintendents 1 (October 8, 1985) (Housing Memo).) The Housing Memo states that double-celling is a result of overcrowding and will continue until there is sufficient space to single-cell inmates. (Housing Memo at 1.) However, the Housing

adhere to the Department's compatibility standards, Respondents are double-celling inmates who should not be housed together, for example violent inmates with non-violent inmates.² Nole argued that as a result of this failure, he fears being victimized by a cellmate. Nole alleged that Respondents have retaliated against him for his repeated complaints regarding their failure to adhere to the Department policies on double-celling. Finally, Nole alleged that Respondents violated Sections 2703, 2704

Memo provides that when double-celling is necessary, an institution should attempt to choose inmates who will be compatible for involuntary double-celling. (Housing Memo at 2.) The memo lists the following factors for consideration:

- a. Familial relationship, e.g., brothers, cousins
- b. Age
- c. Race and ethnic biases of the inmates to be housed together
- d. Interests
- e. Geographic identity
- f. Length of sentence
- g. Program assignment (job, education, etc.)
- h. Program level
- i. Security needs (escape, substance abuse, violence, deviate sexual acts, etc.)
- j. Behavioral disposition and attitude
- k. Group identification (gangs, etc.)
- l. Sophistication (prior incarceration, etc.)
- m. Other factors deemed appropriate by the institution.

(Housing Memo at 2-3.) Additionally, the Housing Memo lays out the following procedure for double-celling inmates: (1) inmates are identified as candidates for double-celling either by staff or by the inmate's own request; (2) staff interview the inmate to determine his willingness and possible issues; (3) staff approve the inmate for double-celling after consideration of the relevant criteria; (4) the inmate is oriented and informed of the rules he is required to follow with regard to the double-celling and of the procedures for requesting that his double-celling be terminated; (5) monitoring, including supervision and interviews, to identify and correct problems. (Housing Memo at 3.)

² Specifically, Nole alleged that Respondents place "young with old; smokers with non-smokers, muslims [sic] with christians [sic], educated with uneducated, diseased with healthy" (Complaint ¶ 21.)

and 2705 of the Crimes Code, 18 Pa. C.S. §§ 2703, 2704-05³ by denying him single-cell status while single-celling less senior inmates.

On July 2, 2007, Respondents filed Preliminary Objections to Nole's Complaint. In response to Nole's civil claims for recklessness, negligence, and infliction of emotional distress the Respondents raised sovereign immunity as a defense. In response to Nole's claims that Respondents violated provisions of the Crimes Code, Respondents objected that, per Rule 506 of the Pennsylvania Rules of Criminal Procedure, private criminal complaints must be submitted to a Commonwealth attorney for approval before the charge may be brought to a trial court. With regard to other various allegations in Nole's Complaint, Respondents objected that such allegations were insufficiently pled, as Nole did not specify what statute or statutes they had violated. Respondents also objected that Nole had no constitutionally-protected right to single-cell status. Finally, Respondents objected that life-sentenced inmates were not a protected class and that Nole had failed to allege facts which would show that he was being treated disparately from similarly-situated inmates.⁴

On July 6, 2007, Nole filed a Motion to Amend Complaint, without attachments, seeking the trial court's permission for leave to amend his Complaint. Without ruling on Nole's motion, the trial court ordered both parties to file briefs

³ These sections are provisions under the Crimes Code. Section 2703 defines the crime of "[a]ssault by prisoner"; section 2704 defines the crime of "[a]ssault by life prisoner"; and section 2705 defines the crime of "[r]ecklessly endangering another person." 18 Pa. C.S. §§ 2703, 2704-05.

⁴ Although Nole only enumerated one count in his Complaint, he made a number of different arguments and allegations. Respondents' Preliminary Objections address these arguments as well as the enumerated count.

regarding the Preliminary Objections within thirty days. Nole did not file a brief in opposition to Respondents' Preliminary Objections. Instead, on July 30, 2007, he filed an Amended Complaint and Motion for Preliminary Injunction. The allegations of the Amended Complaint were nearly identical to those of the original Complaint; however, Nole did attach ten exhibits, labeled A through J.⁵

⁵ Exhibit A consists of documents regarding Nole's request to be classified as a "Z-code," a classification requiring single-cell status. These documents include: Nole's written request that his classification be reevaluated; an Official Inmate Grievance form stating that Nole's request to be reevaluated for Z-Code status had been unreasonably rejected; a grievance rejection form indicating that Nole had provided "nothing to substantiate the need for Z code status"; and a letter from Nole to Patrick, dated December 13, 2006 requesting that Nole's grievance be allowed to proceed.

Exhibit B is a copy of the December 14, 2006 letter from Nole to Patrick which was included in Exhibit A.

Exhibit C consists of documents relating to a subsequent grievance by Nole objecting to the denial of his request to be reevaluated for Z-Code status. These documents include: Nole's Official Inmate Grievance form; a Grievance Rejection form stating that the issue presented by Nole's grievance had already been addressed; a letter from Nole to Patrick, dated December 29, 2006, objecting to the denial of Nole's grievances; a letter from Patrick to Nole, dated January 4, 2007, stating that he agreed with the disposition of Nole's grievances; a letter from Nole to Sharon M. Burks, Department's Chief Grievance Officer, dated January 8, 2007, requesting that his grievances be processed; and a letter from the Department Secretary's Office of Inmate Grievances & Appeals to Nole stating that Nole had failed to fully comply with Department regulation DC-ADM 804, which requires that the appeal of a grievance to final review must include photocopies of, among other documents, the Initial Review.

Exhibit D is the Housing Memo.

Exhibit E consists of two letters. The first is from Nole's sister, Loretta Nole, to Jeffrey Beard (Beard), Secretary of the Department, dated December 20, 2006, disputing that Nole is an escape risk, and arguing that he should be single-celled. The second is from Beard to Loretta Nole, dated January 8, 2007, informing her that Nole's Z-Code determination was made by SCI-Houtzdale personnel and that she should contact them.

Exhibit F consists of two letters. The first is from Nole's wife, Susan Beard-Nole (Beard-Nole) to Beard, dated April 4, 2007, discussing generally the inequity of Nole not being single-celled, as well as perceived problems with Department's policy regarding drug testing. The second is a letter from Beard to Beard-Nole, dated April 16, 2007, stating that Nole did not meet criteria to be single-celled, and that the Department's drug testing procedures are adequate.

Exhibit G, likewise, consists of two letters. The first is from Loretta Nole to Patrick, dated March 21, 2007, inquiring why Nole was single-celled without being classified as a Z-Code in previous institutions, while officials at SCI-Houtzdale would not single-cell him unless he was

On July 31, 2007, Respondents filed their brief in support of their Preliminary Objections. On August 6, 2007, Nole filed a Motion to Moot Previous Filings in an attempt to compel Respondents to respond to his Amended Complaint. On August 8, 2007, the trial court sustained Respondents' Preliminary Objections and dismissed Nole's Motion for Preliminary Injunction and dismissed, with prejudice, Nole's Complaint. The trial court found that no legitimate purpose would be served by permitting Nole to amend his Complaint. Nole brings the present appeal.⁶

In his brief to this Court, Nole argues that: (1) the trial court abused its discretion by dismissing his Complaint without allowing him to amend it; (2) the trial court showed bias against him by improperly adopting the statements of law and arguments contained in Respondents' brief on their Preliminary Objections; (3) the

classified as a Z-Code. The Second is from Patrick to Loretta Nole, dated April 4, 2007, explaining that space in the prison is limited and that inmates are only single-celled when necessary, in order to conserve space.

Exhibit H is a letter from Nole to Blake, dated March 4, 2007, arguing that Nole deserves to be single-celled based on his long incarceration without a cellmate, his service to prison society and his "relatively good behavior." A signed, handwritten note from Blake to Nole, dated March 5, 2007 at the bottom of the letter, informs Nole that he will not be single-celled.

Exhibit I is a form request from Nole to Patrick, dated March 7, 2007, asking why he was moved off his unit soon after requesting to know why he did not qualify for single-cell status. A reply from Patrick on the form states, "[a]ny 'contributions' you might make are overshadowed by your neediness. Due to the overpopulation I do not have the luxury of handing out single cells. You don't qualify for a Z-Code. Perhaps you will have better luck at another facility." (Complaint, Ex. I.)

Exhibit J is a table of custody levels and program codes correlated with custody levels. Notably, both A- and Z-Codes provide for single-cell assignments. A-Codes are long-term offenders who are subject to minimum or medium supervision. Single-cell status for A-Codes is restricted based on availability and good behavior.

⁶ Where a trial court dismisses a complaint based on preliminary objections, this Court's review is limited to determining whether there has been an error of law or an abuse of discretion. Jones v. City of Philadelphia, 893 A.2d 837, 842 (Pa. Cmwlth. 2006).

trial court erred in not allowing discovery; and (4) the trial court violated Rule 1531 of the Pennsylvania Rules of Civil Procedure by failing to hold a hearing on Nole's Motion for Preliminary Injunction prior to dismissing it.⁷

We will first address Nole's argument that the trial court erred in dismissing his Complaint without allowing discovery where disputed facts were at issue. We note that Nole did not request discovery prior to the dismissal of his Complaint. We fail to see how the trial court erred in not granting Nole discovery he never requested.

Second, Nole argues that the trial court erred by not permitting him to amend his Complaint. Citing Miller v. Stroud, 804 A.2d 749 (Pa. Cmwlth. 2002) and Mistick, Inc. v. City of Pittsburgh, 646 A.2d 642 (Pa. Cmwlth. 1994), Nole argues that because amendments to pleadings are to be liberally permitted, and because his amendment would not have surprised or prejudiced Respondents, the trial court abused its discretion by not permitting him to amend his complaint. We disagree.

Rule 1028(c) of the Pennsylvania Rules of Civil Procedure states that "[a] party may file an amended pleading *as of course within twenty days* after service of a copy of preliminary objections." Pa. R.C.P. No. 1028(c)(1) (emphasis added). Here, Nole received Respondents' Preliminary Objections on July 3, 2007. Under Rule 1028, he had until July 23, 2007 to file his Amended Complaint as of course. However, he instead filed a motion to amend his complaint. Nole did not file his Amended Complaint until 7 days after the 20 day period had run. If a party does not file an amendment as of course within the 20 day period permitted by Rule 1028, then the

⁷ In the interest of clarity we discuss Nole's arguments in a different order than he lays them out in his brief.

general rule on amendment, Pa. R.C.P. No. 1033, applies. Rule 1033 states that a party may amend his pleading with the “consent of the adverse party or by leave of court” Pa. R.C.P. No. 1033. While the decision whether to grant leave to amend is within the discretion of the trial court, and will not be overturned absent a “clear abuse of discretion,” leave to amend should generally be allowed, particularly where preliminary objections are sustained. Koresko v. Farley, 844 A.2d 607, 618 (Pa. Cmwlth. 2004); Jones, 893 A.2d at 846; see also Pa. R.C.P. No. 126 (stating that the Rules of Civil Procedure must be liberally construed to promote justice and judicial efficiency; procedural defects which do not impair parties’ substantial rights may be disregarded). However, it is not an abuse of discretion for a court to deny leave to amend where it appears reasonably likely that such amendment will be futile. Koresko, 844 A.2d at 618.

Here, the trial court dismissed Nole’s Complaint with prejudice, stating that permitting Nole to amend would serve no legitimate purpose. After examining Nole’s Amended Complaint, the amendment he alleges the trial court should have allowed him to make, we are in a position to definitively confirm that allowing Nole to amend would not only *likely* be futile, but would have, in fact, been futile.

Respondents put forth five preliminary objections. They first raised sovereign immunity as a defense to Nole’s allegations of reckless endangerment, negligence, and infliction of emotional distress. Article I, Section 11 of the Pennsylvania Constitution, provides in part that “[s]uits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.” Pa. Const. art I, § 11. Pursuant to Section 11, the Legislature has directed

that "the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign immunity and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. C.S. § 2310. While the Legislature has enumerated several exceptions under which Commonwealth parties may be liable,⁸ the allegations of Nole's Complaint and Amended Complaint do not even arguably implicate these exceptions. Nowhere in his Complaint or Amended Complaint does Nole allege facts that would indicate that Respondents were not acting within the scope of their respective duties when they took the actions of which Nole complains. Indeed, the gravamen of Nole's Complaint is that he was harmed by actions the Respondents performed in the course of their duties as officials at SCI-Houtzdale. For this reason, this objection would have been fatal to these claims even as they were set forth in Nole's Amended Complaint and, therefore, in regard to this preliminary objection, permitting Nole to amend would have been futile.

Respondents' second preliminary objection is that, under Pa. R. Crim. P. 506, a private criminal complaint must be submitted to a Commonwealth attorney for approval before it may be filed in a trial court. In both his Complaint and his Amended Complaint Nole alleges that Respondents violated provisions of the Crimes Code. Nole does not allege, either in his Complaint or in his Amended Complaint, that he submitted these criminal charges to a Commonwealth attorney. Even had the trial court allowed Nole to amend his Complaint, Nole's charges against the

⁸ These exceptions include: vehicle liability; medical professional liability; care, custody and control of personal property; commonwealth real estate, highways and sidewalks; potholes and other dangerous conditions; care, custody or control of animals; liquor store sales; National Guard activities; and toxoids and vaccines. 42 Pa. C.S. § 8522(b).

Respondents would have failed under Rule 506. Therefore, leave to amend would have been futile.

Respondents' third preliminary objection states that Nole did not plead with sufficient specificity his allegations that Respondents violated Department policy. Pa. R.C.P. No. 1019 requires that a complaint include all material facts necessary to support a claim. Here, Nole broadly alleges that Respondents violated the Department policy laid out in the Housing Memo.⁹ Nole does not, however, specify *how* Respondents violated this policy. For example, Nole did not allege, in his Complaint or his Amended Complaint, that he is being or has been housed with a young inmate, a violent inmate, or an inmate with incompatible religious beliefs. Nor does either complaint allege that Nole has suffered any concrete harm as a result of the Respondents' alleged failure to follow its policy. Accordingly, permitting Nole to amend his Complaint with regard to this objection would have been futile.

Respondents' fourth and fifth preliminary objections argue that, insofar as Nole makes constitutional claims, these claims fail because there is no constitutionally-protected right to single-cell status and because individuals sentenced to life imprisonment do not constitute a protected class. As Respondents pointed out in their Preliminary Objections, the United States Supreme Court held in Rhodes v. Chapman, 452 U.S. 337, 347-48 (1981), that double-celling, in and of itself, does not violate the Eighth Amendment prohibition against cruel and unusual punishment.

⁹ Nole's allegations included violations such as housing inmates of different religions together and old inmates with young inmates. We note that these "violations" were not violations of the policy's more mandatory provisions, but rather related to *factors* that administrators were instructed to *consider*. (See Housing Memo at 2.)

Likewise, relying on Rhodes, this Commonwealth's Supreme Court, in Jackson v. Hendrick, 509 Pa. 456, 503 A.2d 400 (1986), held that single-celling was not constitutionally required. Rather, the Court held that, in determining whether prison conditions violate the Eight Amendment, a court must determine whether those conditions "taken as a whole, either inflict unnecessary or wanton pain or amount to grossly disproportionate punishment for the crime for which the prisoner has been incarcerated." Id. at 469, 503 A.2d at 406. As discussed above, Nole's Complaint and Amended Complaint do not articulate any concrete facts which would indicate that he is actually being subjected to dangerous or otherwise unconscionable conditions. Therefore, because double-celling does not inherently violate the Eighth Amendment, Nole's claims on this basis fail and amendment of his Complaint would have been futile. Likewise, insofar as Nole bases any of his constitutional claims on the theory that he is being discriminated against as a life-sentenced prisoner, he does not cite, nor was this Court able to locate, any controlling case holding life-sentenced inmates to be a protected class. Moreover, Nole did not allege, either in his Complaint or his Amended Complaint, any specific facts which would show that he was being treated differently from other inmates similarly situated to him; therefore, the trial court did not err in finding that leave to amend would have been futile with regard to these claims. For these reasons, the trial court did not err in withholding from Nole leave to amend his Complaint.

We next consider Nole's argument that the trial court erred by adopting in whole the statements of law and arguments contained in Respondents' Preliminary Objections. In its Opinion, giving justification for its decision to uphold Respondents' Preliminary Objections, the trial court stated only that "[t]his Court has

reviewed the statements of law and precedent set forth in the [Respondents'] Preliminary Objections and finds the same to be both well reasoned and correct. Therefore, the Court adopts the statements of law and arguments contained therein." (Trial Ct. Op. at 3.) Nole argues that this adoption by the trial court held him to a higher standard than that to which a pro se litigant should be held and violated the Supreme Court's decision in Commonwealth v. Williams, 557 Pa. 207, 732 A.2d 1167 (1999). We disagree on both points.

While a court should not penalize a pro se litigant for minor procedural infractions which do not affect a party's substantive rights, a pro se litigant is still subject to the same rules of procedure as a party represented by counsel and has no greater right to be heard. Peters Creek Sanitary Authority v. Welch, 545 Pa. 309, 315 n.5, 681 A.2d 167, 170 n.5 (1996); Cassell v. Shellenberger, 514 A.2d 163, 165 (Pa. Super. 1986). Moreover, a party who represents himself assumes, to a degree, "the risk that his lack of legal training will prove his undoing." Welch, 545 Pa. at 315 n.5, 681 A.2d 167, 170 n.5 (citing Vann v. Unemployment Compensation Board of Review, 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985)). By adopting the legal arguments of Respondents' Preliminary Objections, the trial court was not punishing Nole for representing himself, but was recognizing that, in fact, Respondents' arguments conformed to the law and were legally correct.

Nole's reliance on Williams for the principle that it is error for the trial court to adopt the argument in a party's brief or filing as its opinion is misplaced. The Supreme Court's ruling in Williams turned on the fact that Williams involved a trial

court's post-conviction review of a death sentence, as the Court explicitly acknowledged:

this Court has not prohibited the adoption of portions of a party's arguments in support of a judicial disposition. Certainly Pa. R.A.P. No. 1925(a) provides a degree of flexibility in this regard, permitting trial judges, where appropriate, to specify places in the record where reasons may be found for their decisions. We cannot, however, in this post-conviction case involving a review of the propriety of a death sentence, condone the wholesale adoption by the post-conviction court of an advocate's brief.

Williams, 557 Pa. at 224-25, 732 A.2d at 1176. Indeed, as the Court in Williams noted, it is generally permissible for a trial court to adopt a party's argument as the court's opinion, so long as the court specifies the location in the record where the reasoning for the court's decision may be found. See, e.g., Miller Development Corp. v. Union Township Municipal Authority, 666 A.2d 391, 395 (Pa. Cmwlth. 1995) (holding that trial court did not err in adopting by reference the arguments and statements of law in a party's brief as the basis for its decision). Here, the trial court specified the location in the record where the reasoning for its decision could be found: Respondents' Preliminary Objections. As we held in Miller Development Corp., this sort of incorporation by reference, while perhaps not ideal, is not error.

Finally we examine Nole's argument that the trial court erred in dismissing his Motion for Preliminary Injunction without holding a hearing or considering the immediate, irreparable injuries that might have resulted from double-celling. In his Motion for Preliminary Injunction, Nole asked the trial court to enjoin Respondents from double-celling inmates without following the compatibility guidelines outlined in the Housing Memo.


In order to receive a preliminary injunction, the moving party has the burden of showing that each of the following elements is satisfied: (1) “the activity of the defendant is actionable”; (2) “[t]he relief is necessary to prevent immediate and irreparable harm which cannot be compensated by damages”; (3) [g]reater injury will result by refusing it than by granting it”; and (4) “[g]ranteeing the injunction restores the parties to the status as it existed immediately prior to the alleged wrongful conduct.” Hanover Assoc. v. Township of Hanover, 707 A.2d 1178, 1182 (Pa. Cmwlth. 1998) (citing Valley Forge Historical Soc’y v. Washington Mem’l Chapel, 493 Pa. 491, 500, 426 A.2d 1123, 1128 (1981)); Norristown Mun. Waste Auth. v. West Norriton Township Mun. Auth., 705 A.2d 509, 511-12 (Pa. Cmwlth. 1998).

In support of his Motion for Preliminary Injunction, Nole attached four affidavits from inmates at SCI-Houtzdale. These affidavits described the inmates’ experiences with double-celling at SCI-Houtzdale. The affiants stated that, as a result of Respondents’ failure to follow the Department’s compatibility guidelines, they experienced mental and emotional stress due to the potential for violence. While the affidavits discussed the inmates’ fears of violence, they did not provide any objective basis for the trial court to conclude that immediate and irreparable harm was likely to occur. Therefore, Nole failed to satisfy the second element set forth above.

Nole argues that, pursuant to Pa. R.C.P. No. 1531, the trial court was required to hold a hearing on his Motion for Preliminary Injunction. This is incorrect. Rule 1531 does not require a trial court to hold a hearing on every motion for preliminary injunction. Sossong v. Shaler Area School District, ___ A.2d ___, No. 979 C.D.

2007, 2008 WL 596766, at *4 (Pa. Cmwlth., Filed March 6, 2008) (“Although a hearing is preferred, there is no absolute duty on a court to grant an evidentiary hearing on an application for a preliminary injunction.”); Pa. R.C.P. No. 1531 (“A court shall *issue* a preliminary or special injunction only after written notice and a hearing”) (emphasis added). Here, the trial court properly dismissed Nole’s Motion for Preliminary Injunction where he failed to show that immediate, irreparable harm would result if the injunction were not granted. Additionally, as discussed above, Nole’s claims lacked merit, providing the trial court another basis upon which to deny his Motion for Preliminary injunction.

For these reasons, we affirm the decision of the trial court.



RENÉE COHN JUBELIRER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John Frederick Nole,

Appellant

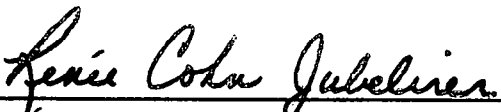
v.

George W. Patrick, Rendall Britton,
Frazier Blake and John Bailey

No. 1779 C.D. 2007

ORDER

NOW, May 15, 2008, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby **affirmed**.


RENEE COHN JUBELIRER, Judge

FILED

MAY 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

Certified from the Record

MAY 15 2008

and Order Exit

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

JESSICA RIX,
Defendant

vs.

GARY CARTWRIGHT, JR.,
Defendant

NO. 2011-701--CD

FILED

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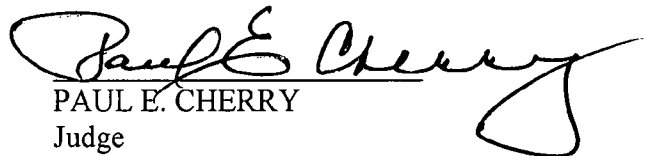
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS

SUPPLEMENTARY CUSTODY CONSENT ORDER

NOW, this 27th day of September, 2017, the parties having agreed to the terms of custody of the Juvenile, EMMILI NOELLE COBURN (D.O.B. 7/14/2003); The Order dated December 6, 2016 is supplemented as follows:

1. Jessica Rix (Mother) shall have periods of visitation and participate in any and all counseling and treatment with the minor child, Emmili Noelle Coburn recommended at and by the Bradley Center.

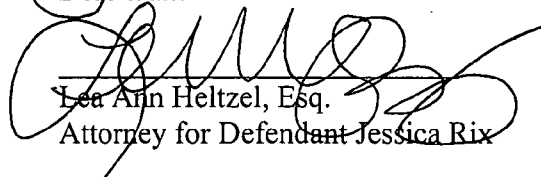
BY THE COURT,


PAUL E. CHERRY
Judge

We, the undersigned, do hereby consent to the entry of the foregoing Order.


JESSICA RIX
Defendant


GARY CARTWRIGHT, JR.
Defendant


Lea Ann Heltzel, Esq.
Attorney for Defendant Jessica Rix