No. 122626

IN THE
SUPREME COURT OF ILLINOIS

AARON P. FILLMORE, B63343, Plaintiff-Appellee, v. GLADYSE TAYLOR, LIEF McCARTHY, and ELDON COOPER, Defendants-Appellants.	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-16-0309 There on Appeal from the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, No. 15 MR 915 The Honorable RUDOLPH M. BAUD, Judge Presiding.

BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Aaron Fillmore is an inmate in the custody of the Illinois Department of Corrections ("Department") at Lawrence Correctional Center ("Lawrence"). Fillmore appeared before the Adjustment Committee at Lawrence because he was charged with violating prison regulations based on his involvement with the Latin Kings security threat group. He was found guilty of the charges and disciplined. The prison's Chief Administrative Officer concurred with that recommendation and imposed the following discipline: one year of C-grade status, one year in segregation, one year of contact visit restrictions, and the loss of one year good conduct credits.

Fillmore thereafter filed a complaint in the circuit court seeking mandamus, certiorari, and declaratory relief to challenge the Adjustment Committee hearing, alleging that it violated both the Department's regulations and his procedural due process rights. The circuit court dismissed the action with prejudice under 735 ILCS 5/2-615, and Fillmore appealed.

The appellate court affirmed the circuit court's judgment in part and reversed in part. Relevant here, the appellate court departed from established precedent holding that provisions of the Illinois Unified Code of Corrections ("the Code") and the Department's administrative regulations and directives do not create judicially enforceable rights for inmates. Fillmore filed a petition for rehearing, which the appellate court denied. Thereafter, defendants electronically submitted a petition for rehearing, which the appellate court

rejected and did not file. Defendants petitioned for leave to appeal, which this Court granted.

STATEMENT OF JURISDICTION

The appellate court entered its judgment on July 12, 2017. *Fillmore v. Taylor*, 2017 IL App (4th) 160309. Fillmore filed a petition for rehearing on July 19, 2017, which was timely under Illinois Supreme Court Rule 367 because it was filed within 21 days of the judgment. (A 31 - A 35).[*] The appellate court denied Fillmore's petition on July 26, 2017. (A 36). On August 2, 2017, defendants electronically submitted for filing a petition for rehearing with the appellate court. (A 37 - A 63). Defendants' petition was timely under Rule 367 because it was submitted for filing within 21 days of the judgment. The appellate court, however, rejected defendants' petition on August 8, 2017. (A 64). On November 8, 2017, on two extensions of time, defendants filed their petition for leave to appeal, which this Court granted on January 18, 2018.

[*] The record on appeal is one common-law volume, cited as "C___." Defendants-Appellants' Appendix is cited as "A____." In addition, this Court may take judicial notice of Fillmore's petition for rehearing and the appellate court's order denying Fillmore's petition. *See People v. Davis*, 65 Ill. 2d 157, 164 (1976) (court may take judicial notice "of other proceedings in other courts, at least where those proceedings involved the same parties and are determinative of the same cause").

ISSUES PRESENTED FOR REVIEW

(1) Whether Rule 367(e) permits each party adversely affected by an appellate court's decision to file one petition for rehearing, even when the appellate court already has denied the petition of one party.

(2) Whether the Code, Department regulations found in the Illinois Administrative Code, and Department directives that govern internal prison operations and management create no judicially enforceable rights for inmates beyond those recognized by the federal and state constitutions.

STATEMENT OF FACTS

Fillmore is an inmate in the Department's custody at Lawrence. (C 10, 24). Between February and December 2014, Department officials gathered information through "[c]onfidential informants, searches, monitored mail and phone calls," and on December 16, 2014, issued a disciplinary report against Fillmore for engaging in conduct prohibited by 20 Ill. Admin. Code § 504, App. A, Rule 205 (Security Threat Group) and Rule 206 (Intimidation or Threats). (C 25 - C 29). The report summarized an "accumulation of incidents" concerning Fillmore's "involvement within the Latin Kings Security Threat Group." (C 25).

The disciplinary report and Adjustment Committee hearing

In February 2014, a confidential informant identified Fillmore as Chairman of the Latin Kings Nation Regional Crown Council. (*Id.*) In May, August, September, October, and December 2014, Fillmore had several phone conversations with his brother, Adam, during which they discussed numerous Latin Kings members at Department correctional centers and at correctional centers in other States. (C 26 - C 29). Department officials also obtained three handwritten notes during cell searches that contained information regarding the Latin Kings and Latin Kings members. (C 26, 29). Department officials determined that the notes were authored by Fillmore after comparing them with handwriting samples in Fillmore's master file which showed similarities in writing style and lettering. (*Id.*) One note stated that the investigative unit

at Lawrence had been watching Fillmore and several other Latin Kings members closely and knew about the gang because an individual referred to as Kevin "told Springfield a lot." (C 27). The note added that "[t]hese people think that I'm going to kill him [(Kevin)] or have him killed. I want to kick him down the steps but that isn't good enough." (*Id.*) Another note included changes to the Latin Kings' Constitution and identified numerous inmates and their leadership positions within the Latin Kings.

(C 27 - C 28).

The disciplinary report concluded that Fillmore violated Rules 205 and 206 "due to Fillmore stating in his own handwriting that he wants to 'kick him (Miller) down the steps but that's not good enough' referring to inmate Kevin Miller B35019 (LK) because Fillmore believes that Miller had told the Investigation Unit about current Latin King activity." (C 29). In addition, the report concluded that Fillmore engaged in the "overt act of accepting an active leadership position within the Latin Kings Security Threat Group," and that his active leadership position "corroborates he (Fillmore) continues to engage in unauthorized Security Threat Group Activity." (*Id.*) The report also noted that confidential informants' names were withheld due to safety and security concerns but that they were deemed reliable "due to corroborating statements provided." (*Id.*)

Fillmore was served with the disciplinary report on December 16, 2014. (C 25). That same day, Fillmore sent a letter to the Adjustment Committee at

Lawrence requesting telephone logs for the dates of conversations included in the report. (C 30). Fillmore asserted that the logs would show he did not use the telephone on those dates. (*Id.*) In addition, he requested the cell search records and to be shown the notes that were found during the searches. (*Id.*) Fillmore requested that eight inmates, one of whom was incarcerated at Menard Correctional Center, be called as witnesses. (*Id.*) Fillmore explained that "each inmate will testify that [he] did not order or direct any security threat group activity within IDOC ever." (*Id.*)

Fillmore further submitted a written statement pleading not guilty to the charges in the report. (C 31). He argued that he did not use the telephone on some of the dates reported. (*Id.*) And he asserted that "any alleged telephone recordings do not substantiate the charge of 205 when played in their entirety, nor do they contain or pertain to any security threat group activity." (*Id.*) Fillmore denied authoring the notes found during the searches, and stated that search records would show that the notes did not come from his "cell, property, or person." (C 32). He also argued that Department Intel Officer Harper could not verify who wrote the notes because "he is not a handwriting expert approved by IDOC." (*Id.*) Finally, Fillmore argued that the December 16, 2014 report violated 20 Ill. Admin. Code § 504.30(f) because it was written more than eight days after the last date of the alleged violation, and that it violated 20 Ill. Admin. Code § 504.30(e)

because he was not issued an investigative disciplinary report during the Department's investigation. (C 33).

Fillmore appeared before the Adjustment Committee on December 19, 2014. (C 34). Leif McCarthy was the chairperson and Eldon Cooper was a committee member. (C 35). The disciplinary report was read to Fillmore, he pleaded not guilty, and he submitted a written statement. (C 34). The Adjustment Committee's report summarized the evidence against him, including that Fillmore was identified as Chairman of the Latin Kings National Regional Crown Council by a confidential informant who was "deemed reliable due to corroborating information and should remain anonymous for the safety and security of the institution." (*Id.*) It also summarized the telephone conversations between Fillmore and Fillmore's brother, and discussed the notes found during the cell searches. (*Id.*)

The Committee concluded that "based on IDR reporting, [Fillmore] is actively participating in the Latin Kings Security Threat Group." (*Id.*) The Committee noted that Fillmore had requested no witnesses. (*Id.*) The Committee recommended that Fillmore be given one year of C-grade status, one year in segregation, one year of contact visit restrictions, the loss of one year of good conduct credits, and one year of a $15 per month restriction. (C 35). The prison's Chief Administrative Officer concurred with the recommendation on December 29, 2014, and Fillmore was served with the final decision on January 3, 2015. (*Id.*)

Fillmore's grievance

Fillmore filed a grievance regarding the Adjustment Committee hearing on January 5, 2015. (C 36). Fillmore claimed that he gave a prison counselor a witness and document review request to give to the Adjustment Committee, and sent a copy of the request to the Adjustment Committee via prison mail. *(Id.)* He also claimed that during the hearing, the Adjustment Committee members stated that they had his witness request but that Corrections Officer Harper, who wrote the disciplinary report, said that the witnesses would not be called. (C 38). Fillmore claimed that Cooper said that he and McCarthy were told to find him guilty and "told to give [him] a year across the board." (*Id.*) Fillmore added that he made oral objections that the Adjustment Committee was not impartial. (*Id.*) He said that he also requested to see the notes, search records, and telephone logs from the dates reported, but that the Adjustment Committee denied his requests. (*Id.*) Fillmore claimed that the Adjustment Committee hearing did not comport with due process and that its final decision violated Department regulations. (C 37 - C 38).

The prison grievance officer's response detailed the facts reviewed when investigating Fillmore's grievance and included a summary of the evidence relied on by the Adjustment Committee in finding Fillmore guilty of the charges. (C 39). The grievance officer recommended that the grievance be denied "based upon a total review of all available information," after

concluding that "D.R. 504 procedures were followed," and there were no grounds to change the decision or disciplinary action. (*Id.*)

The Chief Administrative Officer received the grievance in March 2015, and agreed with the grievance officer's recommendation. (*Id.*) Fillmore appealed to the Department's Director, and the matter was referred to its Administrative Review Board ("Board"). (C 39 - C 40). The Board recommended that the grievance be denied, finding "no violation of the offender's due process in accordance with DR504.80 and DR504.30." (C 40). The Board also noted that it was "reasonably satisfied the offender committed the offense cited in the report." (*Id.*) Gladyse Taylor, the Acting Director of the Department, concurred with the recommendation on August 13, 2015. (*Id.*)

Circuit and appellate court proceedings

Fillmore filed a complaint in the circuit court, naming Taylor, McCarthy, and Cooper as defendants. (C 10). Count I requested mandamus relief and alleged that defendants had a "clear and ministerial duty to follow established federal, state and administrative laws, rules, procedures and regulations." (C 19). Fillmore alleged that defendants violated Department regulations contained in the Illinois Administrative Code by "failing to disclose known exculpatory evidence, failing to review alleged 'notes,' failing to call [his] witnesses, failing to consider all relevant material before determining guilt, failing to state reasons for disregarding exculpatory evidence, failing to

review telephone logs and recordings." (C 20). Count II asserted a claim for a common law writ of certiorari, arguing that defendants violated Department regulations and his procedural due process rights. (C 20 - C 21). In Count III Fillmore sought a declaratory judgment that McCarthy and Cooper violated his due process rights. (C 21 - C 22).

Defendants moved to dismiss the action under 735 ILCS 5/2-615, arguing in part that based on *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258 (4th Dist. 2000), Fillmore could not sue to enforce Department regulations, nor could he use alleged violations of Department rules as the basis for constitutional claims. (C 71 - C 72). The circuit court granted the motion, concluding that Fillmore had no right to the relief requested and that he received all process that was due. (C 100; A 1). Fillmore appealed. (C 95 - C 96).

On July 12, 2017, the appellate court issued an opinion affirming the circuit court's judgment in part and reversing in part. *Fillmore v. Taylor*, 2017 IL App (4th) 160309, ¶ 2. Relevant here, the appellate court stated that "[i]t had always been the law that, in prison disciplinary proceedings, the Department had to follow its own promulgated regulations . . . and that inmates could sue to compel correctional officers to perform nondiscretionary duties set forth in the Department's regulations." *Id*. at ¶ 98 (internal citations omitted). The court concluded that "[t]o the extent that *Ashley* suggests otherwise, we decline to follow *Ashley*." *Id*. The court then stated

that, for a plaintiff to bring a mandamus claim, the public official must have a clear and nondiscretionary duty and "the plaintiff must have a strong equitable case." *Id*. at ¶ 100. Thus, "even if the plaintiff has shown a clear ministerial duty on the part of the public officer, a court nevertheless may, in its discretion, refuse to issue the writ if the court is unconvinced the writ would accomplish 'substantial justice' outweighing the disruption the writ might cause." *Id*. And "[s]imilarly, it must appear that the petitioner for a writ of certiorari has suffered a 'substantial injury or injustice.'" *Id*.

The court then held that Fillmore stated a mandamus claim based on his allegations that defendants failed to comply with 20 Ill. Admin. Code §504.80(d) because they did not document his objection to their lack of impartiality, *id*. at ¶¶ 61-63, and 20 Ill. Admin. Code § 504.80(l)(1) because they did not include a summary of his written statement in their final report, *id*. at ¶¶ 65-67. In addition, the court granted Fillmore's requests for a writ of certiorari based on his allegations that defendants refused to produce the notes found during the cell searches, *id*. at ¶¶ 80-82, and that the Adjustment Committee members refused to recuse themselves, *id*. at ¶¶ 84-86. The court remanded the case to the circuit court "for further proceedings consistent with this opinion." *Id*. at ¶ 102.

On July 19, 2017, Fillmore filed a petition for rehearing, raising issues not pertinent here. (A 31 - A 35). Seven days later, on July 26, 2017, the court denied Fillmore's petition for rehearing. (A 36). On August 2, 2017, within 21

days of the court's judgment, defendants electronically submitted their petition for rehearing. (A 37 - A 63). On August 8, 2017, defendants' submission was rejected and not filed. (A 64). The comments included in the court's e-mail rejecting the filing stated that the petition was "rejected pursuant to S. Ct. R. 367(e). Limitation on Petitions in Appellate Court. When the Appellate Court has acted upon a petition for rehearing and entered judgment on rehearing no further petitions for rehearing shall be filed in that court." (*Id.*).

Defendants petitioned for leave to appeal, which this Court granted.

ARGUMENT

I. Introduction

Rule 367 does not bar a party from filing a timely petition for rehearing where the appellate court's judgment was adverse to both parties, and where the appellate court had already denied a petition filed by another party. A contrary holding would promote gamesmanship and inequitably deprive a party of the right to timely seek rehearing, simply because a different party filed a rehearing petition that the court denied first.

Rule 367 aside, this case concerns whether the Code, Department regulations in the Illinois Administrative Code, and Department directives that govern internal prison operations provide judicially enforceable rights for inmates beyond those required by the federal and state constitutions. Adhering to United States Supreme Court precedent, the appellate court in *Ashley v. Snyder*, 316 Ill. App. 3d 1252 (4th Dist. 2000), held that such provisions were not intended to create judicially enforceable rights for inmates beyond what is constitutionally required. The appellate court's decision in this case was a dramatic departure from that holding and is irreconcilable with long standing Illinois law as well as precedent in many other States.

The court's decision was incorrect because, as the United States Supreme Court has explained, prison statutes and rules are meant to guide prison officials, not to confer judicially enforceable rights on inmates. Compelling policy considerations support that conclusion. To allow inmates to

sue to enforce such provisions creates disincentives for the Department to codify and maintain them, and encourages inmates to comb through the law in search of rules upon which to file lawsuits. And courts in other States that have considered the effect of prison statutes and regulations have likewise concluded that inmates cannot sue to enforce them.

Under the longstanding rule announced in *Ashley*, Fillmore could bring a claim to ensure that the minimum due process requirements set forth in *Wolff v. McDonnell*, 418 U.S. 539 (1974), were satisfied, and his claims could be reviewed as alleged constitutional violations. The prison Adjustment Committee hearing here complied with *Wolff*. But even if this Court were to conclude that it did not, that would not justify departing from *Ashley* and its progeny and transforming internal prison regulations into judicially enforceable rights.

II. The *de novo* standard of review applies in this appeal.

The appellate court's decision to reject defendants' petition for rehearing involves interpretation of an Illinois Supreme Court Rule, which this Court reviews *de novo*. *See People v. Drum*, 194 Ill. 2d 485, 488 (2000) (interpretation of Illinois Supreme Court Rules is a question of law, which is reviewed *de novo*). The rules of statutory construction apply when interpreting Illinois Supreme Court Rules. *People v. Roberts*, 214 Ill. 2d 106, 116 (2005). The primary rule of statutory construction is to ascertain and give effect to the intent, and "[a] reasonable construction must be given to each

word, clause, and sentence of a statute, and no term should be rendered superfluous." *Bueker v. Madison Cty.*, 2016 IL 120024, ¶ 13. And the plain and ordinary meaning of the language in the rule is the "best indication of legislative intent." *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 48.

This Court also reviews *de novo* an order granting a motion to dismiss an action under section 2-615 of the Illinois Code of Civil Procedure. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). A motion to dismiss filed under section 2-615 "challenges the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enter., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009). A section 2-615 motion to dismiss will be granted when it is "clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Id.* The Court accepts well-pleaded facts as true and reasonable inferences drawn from those facts, but the plaintiff "may not rely on mere conclusions of law or fact unsupported by specific factual allegations." *Id.*

III. Rule 367(e) permits a party to file a timely petition for rehearing when the appellate court's judgment is adverse to both parties and when the appellate court has previously denied another party's petition.

An appellate court's judgment can adversely affect multiple parties. When, as here, multiple parties were adversely affected, and when each party had a unique basis upon which to seek rehearing, Rule 367(e) permits each adversely affected party to timely file a petition for rehearing so long as the

court has not already granted a petition for rehearing and entered judgment on rehearing. The appellate court, therefore, incorrectly interpreted Rule 367(e) when it rejected defendants' petition for rehearing — filed within 21 days of the court's judgment — on the basis that it had already denied Fillmore's petition for rehearing.

The procedure for filing a petition for rehearing makes this clear. A party may file a rehearing petition within 21 days of the court's judgment. Ill. Sup. Ct. R. 367(a). The petition must concisely state "the points claimed to have been overlooked or misapprehended by the court." Ill. Sup. Ct. R. 367(b). The opposing party may not file an answer to the petition unless the court requests one, or unless the petition is granted. Ill. Sup. Ct. R. 367(d). If the petition is granted or if the court requests an answer, the opposing party has 21 days to file an answer. *Id*. But "[n]o substantive change in the relief granted or denied by the reviewing court may be made on denial of rehearing unless an answer has been requested." *Id*. In other words, the court may not deny a petition for rehearing and also make substantive changes to its judgment unless it has first requested an answer from the opposing party. *See People v. Conick*, 232 Ill. 2d 132, 136 n.1 (2008) (noting that appellate court improperly failed to request an answer from opposing party before denying party's rehearing petition but substantively changing its judgment).

Rule 367(e) provides that "[w]hen the Appellate Court has acted upon a petition for rehearing *and entered judgment on rehearing* no further petitions

for rehearing shall be filed in that court." Ill. Sup. Ct. R. 367(e) (emphasis added). This rule, by its plain terms, does not bar a party from filing a petition after the court has already denied a different party's petition but has not changed the judgment as a result, because in that circumstance the court has not "entered judgment on rehearing." *See Berg v. Allied Sec., Inc.*, 193 Ill. 2d 186, 191 (2000) (Freeman, J., concurring) (explaining that if a party files a rehearing petition, the judgment's effective date is not altered "unless the court *allows* the petition, in which case the effective date of judgment is *the date that judgment is entered on rehearing*"). One Justice explained that the rules "only bar subsequent petitions for rehearing after the appellate court has *granted* a petition for rehearing." *People v. Basler*, 193 Ill. 2d 545, 559 (2000) (McMorrow, J., dissenting) (emphasis added).

The interpretation offered by those Justices gains added support from the plain language of Illinois Supreme Court Rule 315(b)(1), which provides that "[i]f a timely petition for rehearing is filed, the party seeking review [by the Supreme Court] must file the petition for leave to appeal within 35 days after the entry of the *order denying* the petition for rehearing. If a petition for rehearing is *granted*, the petition for leave to appeal must be filed within 35 days of the *entry of the judgment on rehearing*." Ill. Sup. Ct. R. 315(b)(1) (emphasis added). This language in Rule 315(b)(1) tracks the language in Rule 367(e), which states that no further petitions for rehearing shall be filed if the appellate court has acted upon a petition "and *entered judgment on rehearing*."

Ill. Sup. Ct. R. 367(e) (emphasis added). Rule 315(b)(1) makes clear that judgment is entered on rehearing after the court grants rehearing, not when it denies rehearing. When a rehearing petition is denied, the court does not enter judgment on rehearing, and so Rule 367(e)'s bar on further petitions does not apply.

This interpretation is consistent with the Committee Comments on Rule 367(e). The Comments note that "[w]hen [the appellate court] has twice considered a case, once initially and a second time on rehearing, there would seem to be no need for further consideration, especially when there is a higher court from which relief can be sought." Committee Comments, Sup. Ct. R. 367, par. (e). But if a court denies a petition for rehearing without calling for an answer, then it has only considered the case once and has denied the request to consider the case for a second time. The denial of a petition by one party, therefore, does not preclude another party from asking the court to rehear other portions of the judgment adverse to it that it believes were mistaken.

Further, this Court's style manual makes clear that when the court grants rehearing, the previously filed opinion is automatically withdrawn by operation of law. Style Manual for the Supreme and Appellate Courts at 22 (5th ed. 2017). In other words, the court enters a new "judgment on rehearing," Ill. Sup. Ct. R. 367(e), when it issues its decision after granting rehearing. By contrast, when rehearing is denied, or where an opinion is

merely modified on the denial of rehearing, no new judgment is entered. *See* Style Manual at 20 (explaining that opinion modified on denial of rehearing retains same public domain number, and that original, unmodified opinion is not "withdrawn").

Rule 367(a) confirms that a party may file a timely petition for rehearing notwithstanding the fact that another party's petition has already been denied. That provision specifies that a petition for rehearing "may be filed within 21 days after the filing of the judgment, unless on motion the time is shortened or enlarged by the court or a judge thereof." Ill. Sup. Ct. R. 367(a). If Rule 367(e) were interpreted to bar a petition once a previously filed petition has been denied, a party's time for filing a petition could be shortened, not "on motion," but simply by virtue of the court's order denying the earlier petition. As a result, the second adversely affected party seeking to file a petition would not know that its time to seek rehearing had expired until it received the court's order denying the other party's petition, placing section (a) and (e) in conflict with each other. And Supreme Court Rules "should not be interpreted in a fashion that renders their terms meaningless or superfluous." *People v. Jones*, 168 Ill. 2d 367, 375 (1995).

Here, Fillmore filed a timely petition for rehearing, raising issues not pertinent here (A 31 - A 35), and the appellate court denied it the following week (A 36). But within 21 days of the court's judgment, defendants electronically submitted their petition for rehearing (A 37 - A 38), which raised

different arguments than those included in Fillmore's petition (A 39 - A 62). The appellate court, however, rejected defendants' petition, citing Rule 367(e). (A 64). As a result, defendants were barred from asserting their unique reasons to seek rehearing simply because the court already had ruled on Fillmore's petition before the expiration of the 21 days allowed in Rule 367(a).

The appellate court's interpretation is also contrary to long standing practice in Illinois that permits all parties adversely affected by an appellate court's judgment to seek rehearing once. *See City of Chi. v. Jackson*, 196 Ill. 496, 511 (1902). So long as the court has not granted judgment on rehearing, other adversely affected parties are permitted to seek rehearing within the time specified by Rule 367(a).

This Court's opinion in *A.J. Maggio Co. v. Willis*, 197 Ill. 2d 397 (2001), is fully consistent with this interpretation. There, the appellate court initially entered judgment for the plaintiff, and the defendant filed a petition for rehearing. *Id*. at 399. The appellate court granted the defendant's petition, entered "an order withdrawing and vacating its initial opinion," and then "entered judgment on [the defendant's petition]," ruling in the defendant's favor. *Id*. Thereafter, the plaintiff filed a rehearing petition from the appellate court's second judgment. *Id*. at 399-400. The appellate court denied the petition, and the plaintiff appealed to this Court, arguing that his petition should have been allowed because Rule 367(e) did not provide that "no further petitions shall be filed by *any* of the parties." *Id*. at 401. This Court rejected

the argument, finding that Rule 367(e) was not ambiguous. *Id*. This Court explained that "[the plaintiff's] petition for rehearing came after the appellate court had entered judgment on [the defendant's] petition. The plain language of the rule prohibits a party from filing a petition for rehearing once 'the Appellate Court has granted a petition for hearing and entered judgment on rehearing.'" *Id*. at 402 (quoting Rule 367(e)).

In contrast, the appellate court here did not grant Fillmore's petition for rehearing and did not enter judgment on it. Instead, it denied his petition on July 26, 2017. (A 36). Thereafter, and within the 21 days of the appellate court's July 12, 2017 judgment, as prescribed by Rule 367(a), defendants electronically submitted for filing their petition for rehearing. (A 37 - A 38). This was permitted under the plain language of the rules, and so the petition should have been filed by the appellate court.

The defendants' interpretation of the rules would promote the purpose of Rule 367, which is to allow parties to bring to the court's attention points that they believe were "overlooked or misapprehended." *See* Ill. Sup. Ct. R. 367(b); *see also Berg*, 193 Ill. 2d at 191 (rules of appellate procedure "provide the nonprevailing party with the opportunity for rehearing in order to apprise the court of points the party believes were overlooked or misapprehended") (Freeman, J., concurring). When, as here, both parties were adversely affected by the court's judgment, both parties should be allowed to explain what points they believe were overlooked or misapprehended in reaching that judgment.

To hold otherwise would deprive a party of the opportunity to timely seek rehearing, solely because a different party filed an unmeritorious petition first and that petition was ruled on first. It also would deprive the court of the opportunity to correct any errors.

In sum, Rule 367(e) states that "no further petitions for rehearing shall be filed" when the appellate court has *both* (1) "acted upon a petition for rehearing" and (2) "entered judgment on rehearing." Ill. Sup. Ct. R. 367(e). Here, before defendants filed their petition for rehearing, the appellate court "acted upon" Fillmore's petition, but because the court denied that petition, it did not "enter[ ] judgment on rehearing." Therefore, the subsequent-petition bar of Rule 367(e) was inapplicable and the court should have filed defendants' timely petition for rehearing.

In the alternative, if this Court determines that defendants' petition was barred, it should clarify that the appellate court should wait to act upon all timely filed petitions for rehearing until the time limit in Rule 367(a) expires. Otherwise, parties' rights to seek rehearing will be lost through circumstances outside of their control.

Although the appellate court should have filed defendants' petition for rehearing, remanding the matter back to the appellate court to file and rule on the petition would be a waste of judicial resources because, if the appellate court were to deny the petition, defendants would again seek this Court's

review of this case's merits. Because this matter has been fully briefed, this Court should instead proceed to decide the merits.

IV. The Code and Department regulations and directives governing internal prison operations do not create judicially enforceable rights for inmates, aside from those guaranteed by the federal and state constitutions.

This Court should reaffirm the longstanding principle of Illinois law that statutes, regulations, and directives that concern internal prison operations and that do not implicate inmates' constitutional rights confer no judicially enforceable rights upon inmates. This principle is rooted in the recognition that prisons are unique settings, in which safety and security are best preserved by ensuring that prison officials, and not courts, are responsible for compliance with rules designed to maintain order and discipline. As the United States Supreme Court explained in *Bell v. Wolfish,* 441 U.S. 520, 547 (1979), "problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions," and so prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *See also Turner v. Safley*, 482 U.S. 78, 84 (1987) ("the problems of prisons in America are complex and intractable"). This Court also has acknowledged that "[c]ourts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform." *Beahringer v. Page*, 204 Ill. 2d 363, 375 (2003).

"Operating a prison is an extremely difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are exclusively within the province of the legislative and executive branches of government." *Id*. at 375-76. Courts, therefore, "afford wide-ranging deference to the decisions of prison administrators." *Id*. at 376. In particular, courts have correctly determined that prison rules concerning internal prison operations and management do not create judicially enforceable rights for inmates. The appellate court's decision below is an abrupt and unwarranted departure from this sound rule.

Here, Fillmore sought to enforce Department regulations concerning the preparation of disciplinary reports (20 Ill. Admin. Code § 504.30), investigation of major disciplinary reports (20 Ill. Admin. Code § 504.60), and procedures during Adjustment Committee hearings (20 Ill. Admin. Code § 504.80). (C 20 - C 24). But these regulations are designed to guide prison officials in carrying out their functions. They are not meant to create legal rights for inmates beyond those guaranteed by the federal and state constitutions. To be sure, some of those regulations may codify or implement due process protections for inmates, and insofar as that is the case, an inmate may bring an action for violation of his right to due process, but such regulations do not give rise to a separate cause of action in their own right.

A. *Sandin v. Conner* and *Ashley v. Snyder* hold that prison statutes, regulations, and directives are designed to provide guidance to prison officials and do not give rise to due process rights.

Although "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution," *Turner*, 482 U.S. at 84, "[l]awful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a retraction justified by the considerations underlying our penal system," *Wolff*, 418 U.S. at 555. These principles counsel courts to be cautious before transforming internal prison statutes, regulations, and directives into rights that are judicially enforceable at the behest of inmates.

That is the central lesson of the Supreme Court's decision in *Sandin v. Conner,* 515 U.S. 472 (1995). There, the Court addressed whether a State's prison regulation could form the basis for an inmate's liberty interest protected by the federal Due Process Clause. *Id*. at 476-77. *Sandin* began its analysis with *Wolff*, which held that the "Due Process Clause itself does not create a liberty interest in credit for good time behavior," but that state statutes that conferred good time credits "created a liberty interest in a shortened prison sentences." *Sandin,* 515 U.S. at 477-78. In the two decades since *Wolff*, courts had analyzed inmates' due process claims that were predicated on violations of state statutes by focusing on whether the statute included mandatory or discretionary language. *Id*. at 479. Where the statute

included mandatory language, courts would conclude that the State had created "a protected liberty interest." *Id*. at 480.

Although such an approach "may be entirely sensible in the ordinary task of construing a statute defining rights and remedies available to the general public," the *Sandin* Court noted that it was "a good deal less sensible in the case of a prison regulation *primarily designed to guide correctional officials in the administration of a prison*." *Id*. at 481-82 (emphasis added). Moreover, focusing on the language used in the regulation, rather than on the nature of the deprivation involved, was problematic because it "encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges." *Id*. at 481.

Sandin explained that allowing inmates to claim procedural rights stemming from prison regulations has two undesirable effects. First, it "creates disincentives for States to codify prison management procedures in the interest of uniform treatment." *Id*. at 482. Specifically, prison administrators are "concerned with the safety of the staff and inmate population," and to ensure their safety, prison administrators create guidelines that "are not set forth solely to benefit the prisoner." *Id*. Rather, they are also enacted to instruct employees how to "exercise discretion vested by the State in the warden," so as to avoid "widely different treatment of similar incidents." *Id*. Allowing inmates to derive liberty interests from prison regulations could lead States to "avoid [the] creation of liberty interests

by having scarcely any regulations, or by conferring standardless discretion on correctional personnel." *Id*. Second, reading mandatory language in statutes as giving rise to liberty interests leads to "the involvement of federal courts in the day-to-day management of prisons, often squandering judicial resources with little offsetting benefit to anyone." *Id*.

In light of these concerns, *Sandin* held that mandatory language in states' prison regulations does not automatically create a liberty interest for inmates. *Id*. at 483. Prisoners do not forfeit all liberty interests during their incarceration, but those interests "will generally be limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id*. at 472; *see also Wilkinson v. Austin*, 545 U.S. 209, 223 (2005) (*Sandin* made clear that "the touchstone" of the inquiry into whether a state regulation creates a liberty interest "is not the language of regulations regarding those conditions but the nature of those conditions themselves in relation to the ordinary incidents of prison life").

Five years later, the Illinois Appellate Court followed *Sandin* when deciding *Ashley v. Snyder*, 316 Ill. App. 3d 1252 (4th Dist. 2000). In that case, the court rejected an inmate's argument that an orientation manual created a liberty interest that allowed him to keep certain property items in his cell. *Id.* at 1255-56. The court noted that the "fundamental problem" with the inmate's argument was that "in *Sandin v. Conner*, the United States Supreme Court expressly rejected that methodology in the context of prison liberty

interests." *Id*. at 1255 (internal citations omitted). *Ashley* explained that, pursuant to *Sandin*, "states cannot create enforceable liberty interests in freedom from the routine deprivations and discomforts of prison life." *Id*. *Ashley* concluded that "prison regulations, such as those contained in the inmate orientation manual relied on here, *were never intended to confer rights on inmates* or serve as a basis for constitutional claims." *Id.* at 1258 (emphasis added). Courts have followed *Ashley*'s due process holding many times. *See, e.g*., *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 20; *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 16; *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 22.

The court in *Ashley* rejected an inmate's due process claim based on a prison orientation manual, 316 Ill. App. 3d at 1253, but — until the decision below in this case — an unbroken line of appellate court cases had extended *Ashley*'s holding to complaints asserting legal theories other than constitutional claims and involving rules other than those found in such manuals. *See, e.g., Edens v. Godinez*, 2013 IL App (4th) 120297, ¶¶ 23-24 (affirming dismissal of inmate's mandamus action because Department directives do not create judicially enforceable rights for inmates); *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17 (affirming dismissal of inmate's complaint for declaratory and injunctive relief and compensatory damages because he lacked standing to sue to enforce the Code provision); *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶¶ 25-27 (affirming dismissal of inmate's mandamus action because Department regulations did not confer judicially

enforceable rights on inmates); *Bocock v. O'Leary,* 2015 IL App (3d) 150096, ¶¶ 14-15 (affirming dismissal of inmate's mandamus action for lack of standing to enforce county jail standards); *Ruhl v. Dep't of Corr*., 2015 IL App (3d) 130728, ¶¶ 23-25 (affirming dismissal of inmate's mandamus action asserting right to commissary items at specified price); *McNeil v. Carter*, 318 Ill. App. 3d 939, 943 (3d Dist. 2001) (holding that Code does not imply private right of action to enforce entitlement to adequate medical attention). These decisions made clear that inmates could not sue to enforce the Code or Department regulations and directives.

B. The public policy rationales embodied in *Sandin* and *Ashley* support a holding that prison statutes, regulations, and directives do not confer legally enforceable rights upon inmates.

The rationales relied on in *Sandin* and *Ashley* to hold that prison rules do not create liberty interests for inmates apply with equal force in cases asserting non-constitutional state-law theories. Security and safety concerns in prisons have compelled courts to conclude that prison administrators should be accorded wide deference in adopting and implementing rules to maintain order and discipline. *See Turner*, 482 U.S. at 84; *Beahringer*, 204 Ill. 2d at 375. Those concerns exist regardless of whether an inmate's complaint alleges a constitutional violation arising from an alleged failure to follow a Department rule or asserts another legal theory based on an alleged rule violation.

This case proves the point. The appellate court held that Fillmore stated a claim for an order of certiorari based on his allegation that defendants

violated 20 Ill. Admin. Code § 504.80(f)(1) because during Fillmore's prison Adjustment Committee hearing the Committee members refused to produce the notes found during cell searches. *Fillmore*, 2017 IL App (4th) 160309, ¶¶ 80-81. But those notes contained sensitive information regarding the Latin Kings gang and its members (C 26 - C 29), and Fillmore claimed that he did not write the notes (C 32). Requiring defendants to produce such materials would raise serious security and safety concerns, *see Turner*, 482 U.S. at 84; *Beahringer*, 204 Ill. 2d at 375, and would interfere with the wide discretion prison officials must have to ensure institutional safety and order.

All of the public policy concerns articulated in *Sandin* and *Ashley* apply equally to cases in which inmates assert legal theories other than constitutional violations. First, *Sandin*'s concern that finding liberty interests in regulations based on mandatory language "encourage[s] prisoners to comb regulations," 515 U.S. at 481, persists whether prisoners allege constitutional violations or assert a different legal theory predicated directly upon alleged rule violations. Thus, *Sandin*'s and *Ashley*'s conclusions that state prison statutes, regulations, and directives generally do not create judicially enforceable rights for inmates should apply equally to cases in which inmates assert legal theories other than constitutional violations.

Second, *Sandin*'s observation that deriving due process rights from state prison regulations could discourage States from codifying rules regarding internal prison operations, *id.* at 482, is equally applicable to non-

constitutional claims. If Department officials may be sued each time an inmate believes that a rule was not followed, the Department may choose not to codify rules in the first place, or not to keep rules that have already been enacted. This could result in Department officials being left with "standardless discretion." *Id*. That, in turn, would be contrary to the Code's purpose of preventing arbitrary treatment of inmates. *See* 730 ILCS 5/1-1-2 (2016).

Third, in holding that prison rules do not create rights for inmates, *Ashley* noted that prisoner cases "depleted the resources of prosecutors, the judiciary, and [the Department]" and "unnecessarily diverted [the Department's] attention from ensuring that prisoners are granted their genuine rights." 316 Ill. App. 3d at 1258. This Court has also acknowledged that prisoner litigation burdens courts, explaining that a Code provision was enacted to "curb the large number of frivolous collateral pleadings filed by prisoners which adversely affect the efficient administration of justice . . . ." *People v. Conick*, 232 Ill. 2d 132, 141 (2008). Allowing inmates to file lawsuits for any perceived violation of the Code or Department regulations and directives, regardless of what the provision governed or to whom it was directed, would only increase those burdens.

Indeed, there is already evidence that *Fillmore*'s holding, if not reversed by this Court, will likely increase the number of lawsuits brought by prisoners. Despite this Court's frequent admonition that mandamus is an "extraordinary

remedy," *Burris v. White*, 232 Ill. 2d 1, 7 (2009), the inmate in *Cebertowicz v. Baldwin*, 2017 IL App (4th) 160535, sought an order of mandamus regarding the cost of photocopies at the prison, *id.* at ¶ 1. If inmates have the right to sue to enforce regulations concerning photocopy prices, one can expect them to sue to enforce any number of Department regulations, no matter how mundane. *See Jackson*, 2011 IL App (4th) 100790, ¶¶ 16-17 (dismissing inmate's complaint alleging violation of the Code concerning commissary prices).

Although the court in *Cebertowicz* ultimately affirmed the dismissal of the inmate's complaint because the alleged violation inflicted no injustice on him, *id*. at ¶ 48, the case shows that *Fillmore* created an unworkable standard. The court in *Fillmore* reasoned that its holding would not "throw the door open to petty litigation" because even if a plaintiff has a clear affirmative right to relief, a court may nonetheless decline to issue a writ of mandamus if it "is unconvinced the writ would accomplish substantial justice outweighing the disruption the writ might cause." 2017 IL App (4th) 160309, ¶ 100. Similarly, the appellate court stated that the petitioner in a certiorari case must show that he has "suffered a substantial injury or injustice." *Id*. But it is not clear what the appellate court meant by this standard. If substantial injustice or injury meant that an inmate's constitutional rights had been violated, then the inmate could file a lawsuit alleging those constitutional violations, independent of any particular rule or regulation violation. But neither

Fillmore nor *Cebertowicz* provided guidance as to what would constitute substantial injury or injustice below the constitutional violation threshold. Under the *Ashley* rule, the complaint in *Cebertowicz* may have been disposed of without the need for an amorphous inquiry into "substantial justice."

Courts in other jurisdictions have relied on these public policy rationales to hold that prison rules do not create judicially enforceable rights for inmates. *See In re Johnson*, 176 Cal. App. 4th 290, 297 (Cal. Ct. App. 2009) ("[p]rison regulations, including a prison's disciplinary code, are primarily designed to guide prison officials in the administration of the prison and are not designed to confer basic rights upon the inmates"); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1211 (S.D. Cal. 2012) (inmate could not assert independent cause of action based on alleged violation of regulation because "[t]he existence of regulations such as these governing the conduct of prison employees does not necessarily entitle Plaintiff to sue civilly to enforce the regulations or to sue for damages based on the violation of the regulations"); *State ex. rel. Shepherd v. Croft*, No, 09AP-621, 2010 WL 323225, ¶¶ 4-5 (Ohio Ct. App. 2010) (denying inmate's request for mandamus relief where inmate alleged violation of Ohio Administrative Code because regulations did not give inmate a clear legal right to relief, and noting that "prison procedural regulations are primarily designed to guide correctional officials in prison administration, rather than to confer rights on inmates"); *Rawlings v. Wetzel,* No. 562 M.D. 2016, 2017 WL 4701136, at *3 (Pa. Commw. Ct. 2017) (administrative regulations do not create

enforceable rights for inmates and a "failure to comply with prison policy is not a basis for a cause of action").

C. Given their purpose, prison statutes, regulations, and directives do not meet the standard for finding an implied right of action.

A holding that the prison rules governing internal operations do not create judicially enforceable rights for inmates would give effect to the purpose of the statutory and regulatory scheme governing prison operations. *Sandin* explained that prison regulations are primarily designed to guide prison officials. 515 U.S. at 481-82. Illinois statutes, regulations, and institutional directives governing internal prison operations share that objective.

Even outside the prison context, a violation of a statute or regulation does not automatically provide an individual with a cause of action to sue based on that violation. Where a statute does not explicitly provide for a cause of action for a plaintiff, he must show that an implied right of action exists in the statute. *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004). Under *Ashley*, an implied right of action does not exist for inmates because "Illinois law creates no more rights for inmates than those which are constitutionally required." 316 Ill. App. 3d at 1258. Moreover, implying a right of action would be irreconcilable with *Sandin* and *Ashley*, which instructed that inmates should not be permitted to comb through prison rules in search of causes of action.

But even if this Court analyzed whether inmates have an implied right of action to sue for violations of prison rules, that question would be answered

in the negative. An implied right of action exists if: (1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute. *Metzger*, 209 Ill. 2d at 36.

Inmates cannot establish the first factor of the *Metzger* test here because this case concerns prison regulations governing internal operations. And these regulations do not create judicially enforceable rights for inmates because they are primarily designed to guide officials in the administration of the prison. *See Sandin*, 515 U.S. at 481-82; *Ashley* 316 Ill. App. 3d at 1258. These regulations, therefore, were enacted to benefit prison officials, not inmates. As a result, the first factor is not met. In *McNeil*, an inmate alleged that prison officials had violated certain provisions of the Code when they failed to provide him with adequate medical treatment. 318 Ill. App. 3d at 941. The appellate court held that the inmate belonged to the class of people for whose benefit the statute was enacted because the inmate alleged that he was treated arbitrarily and oppressively by the warden, and section 5/1-1-2 of the Code stated that part of the purpose of the Code was to prevent arbitrary and oppressive treatment of inmates. *Id*. at 942-43. But this case involves regulations that govern disciplinary proceedings in prisons, and these are

designed to provide guidance to prison officials. *See Sandin*, 515 U.S. at 481-82; *Ashley* 316 Ill. App. 3d at 1258.

The third factor is not satisfied here because implying a private right of action is inconsistent with the underlying purpose of the Code and Department regulations or directives governing internal prison operations. Such rules are "primarily designed to guide correctional officials in the administration of a prison." *Sandin,* 515 U.S. at 481-82; *Ashley*, 316 Ill. App. 3d at 1258; *see also Romero v. O'Sullivan*, 302 Ill. App. 3d 1031, 1034-35 (4th Dist. 1999) (Department regulations "set policy objectives for the Department," and prison directives are "directed to the staff of the Department and relate to their responsibilities in implementing Department policy"). Thus, although *McNeil* stated that the inmate was a member of the class for whose benefit the statute was enacted, the appellate court ultimately declined to find a private right of action for the inmate, holding that "the general purpose of the statute does not lend itself to a private cause of action for medical mistreatment of prisoners." 318 Ill. App. 3d at 943. The appellate court went on to note that "[t]he Code was primarily enacted to provide the courts with direction when imposing sentences with the desire to return an offender to useful citizenship." *Id*.

Moreover, as *Ashley* explained, if inmates are permitted to sue to enforce "rights" found in these rules, prison officials will be hampered in their

ability to "manage the volatile prison environment," 316 Ill. App. 3d at 1259, which in turn would undermine the very purpose of such provisions.

In addition, one of the Code's stated purposes is to "prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents." 730 ILCS 5/1-1-2(c) (2016). To that end, the Department enacted regulations to guide employees. *See, e.g.*, 20 Ill. Admin. Code §§ 504, *et seq*. Indeed, *Sandin* recognized that regulations are needed to instruct employees how to "exercise discretion vested by the State" to avoid "widely different treatment of similar incidents." 515 U.S. at 482. But to find that a private right of action exists under these internal prison regulations could discourage the Department and prisons from maintaining or enacting those regulations. *Id*. Without them, Department employees could be left with "standardless discretion," *id*., which would decrease the likelihood that incidents would be handled uniformly. Accordingly, implying a private right of action would be inconsistent with the purpose of the rules that govern internal prison operations.

Finally, the fourth factor is not met because implying a private right of action is not necessary to provide an adequate remedy for inmates. Courts create an implied right of action "only in cases where the statute would be ineffective, as a practical matter, unless such an action were implied." *Metzger*, 209 Ill. 2d at 39. But the prison rules would not be ineffective without judicial enforcement because inmates may file grievances concerning any claimed violations. *See* 730 ILCS 5/3-8-8 (2016); 20 Ill. Admin. Code

§§ 504.810, 504.850; *see also McNeil*, 318 Ill. App. 3d at 943 (finding implied right of action not necessary to provide adequate relief because inmate could file grievance). And to the extent that any action independently violates an inmate's constitutional rights, the inmate may file a lawsuit based on that constitutional provision. *See* 42 U.S.C. § 1983; *see also Turner*, 482 U.S. at 84 (courts "must take cognizance of the valid constitutional claims of prison inmates"); *Wolff*, 418 U.S. at 556 (summarizing constitutional rights held by inmates while in prison).

D. Mandamus is not an appropriate remedy to enforce such prison statutes, regulations, and directives.

Even if the implied right of action test is not necessary when an inmate seeks an order of mandamus, *see Noyola v. Bd. of Educ. of the City of Chi.*, 179 Ill. 2d 121, 132 (1997), an inmate must still establish entitlement to that relief. Specifically, a party must establish "a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *Burris*, 232 Ill. 2d at 7. But, as argued *supra* at pp. at 25-30, the Code and Department regulations and directives concerning internal prison operations are meant to guide prison officials, not to create rights for inmates. Inmates, therefore, have no clear right to relief under such regulations.

Assuming that those rules did create rights for inmates, the law must leave no room for discretion on the part of the public officer for a plaintiff to be entitled to mandamus. *See id*. Thus, courts would be required to analyze the language of the regulation to determine whether it was meant to be

permissive, mandatory, or directory. *See People v. Delvillar,* 235 Ill. 2d 507, 514 (2009). But this approach would cause Illinois courts to do exactly what *Sandin* and *Ashley* cautioned against. *Sandin,* 515 U.S. at 480-81; *Ashley*, 316 Ill. App. 3d at 1259. The Code and Department regulations governing internal prison operations, therefore, are not meant to provide a basis for mandamus relief for inmates.

To be sure, this Court has sometimes allowed inmates to use mandamus to compel prison officials to comply with certain regulations. *See Johnson v. Franzen*, 77 Ill. 2d 513 (1979); *People ex rel. Abner v. Kinney*, 30 Ill. 2d 201 (1964). But those cases are distinguishable from the issue presented here.

First, *Johnson* and *Kinney* involved liberty interests under the federal Due Process Clause. In *Johnson*, the inmate alleged that the Department failed to apply day-for-day good-conduct credit to his prison sentence. 77 Ill. 2d at 517. And in *Kinney*, the inmate alleged that he was eligible for parole and was not being given a hearing that would allow him to be released from prison. 30 Ill. 2d at 202. Defendants do not dispute that inmates may sue to enforce procedural rights when the Constitution requires it.

Second, both cases pre-date *Sandin*, and thus were not based on a modern understanding of prison litigation and correctional statutes and regulations. *See supra* IV.A.

Third, both cases are factually dissimilar to this one. In *Johnson*, an inmate sought a writ of mandamus, alleging that the Department failed to

apply day-for-day good-conduct credit as set forth in the Code because a Department regulation specified another method for applying those credits. 77 Ill. 2d at 517. This Court reversed the circuit court's dismissal of the action, finding that "the Code directs the Department to promulgate rules and regulations which provide for day-for-day good-conduct credit, and there is no authority in the amended code for the Department to promulgate rules providing for less than day-for-day credit." *Id*. at 518.

Johnson, therefore, involved a conflict between the Code and a Department regulation. Of course, when a department or agency is a "creature of statute," then "any power or authority claimed by it must find its source within the provisions of the statute by which it is created." *Granite City Div. of Nat. Steel Co. v. Ill. Pollution Control Bd*., 155 Ill. 2d 149, 171 (1993). And "administrative rules can neither limit nor extend the scope of a statute." *Outcom, Inc. v. Ill. Dep't of Transp*., 233 Ill. 2d 324, 340 (2009); *see also N. Ill. Auto. Wreckers & Rebuilders Ass'n v. Dixon*, 75 Ill. 2d 53, 60 (1979) ("statute may not be altered or added to by the exercise of a power to make rules and regulations thereunder"). A plaintiff, therefore, is not precluded from filing a lawsuit alleging that a Department rule is inconsistent with or violates a statute, or that the Department acted beyond its statutory authority in enacting the rule.

But Fillmore has not alleged that the Department regulations were in conflict with the Code, or that defendants acted outside of their statutory

authority when conducting his Adjustment Committee hearing. Rather, he alleged that they did not comply with all Department regulations. That is a different issue than the one presented in *Johnson*.

Similarly, in *Kinney*, a statute specified that an inmate "shall not be eligible for parole until he has served the minimum limit fixed by the court, good time being allowed as provided by law." 30 Ill. 2d at 202. A Department of Public Safety regulation provided that inmates were eligible for a parole hearing after serving eight years and nine months. *Id*. The plaintiff applied for a parole hearing when he was eligible under the regulation. *Id*. at 202. His request was denied because he had been demoted to Grade E, and pursuant to a Parole and Pardon Board rule inmates needed to maintain a Grade A assignment for a specified period before they could receive a hearing. *Id*. at 203. The plaintiff brought an original mandamus action, seeking to compel Parole and Pardon Board members to afford him a parole hearing. *Id*. at 202. This Court issued the writ of mandamus, reasoning that "[t]he Parole Act specifically provides the number of years which a prisoner must serve before he becomes eligible for parole. . . . Neither the Parole Board nor the Department of Public Safety can by rules change the statutory provisions of eligibility for parole." *Id*. at 206. Just as with *Johnson*, *Kinney* was about an agency exceeding its authority and contradicting relevant statutes. Again, that kind of claim is absent here.

In holding that Fillmore could assert a claim for mandamus, the appellate court relied in part on *Holly v. Montes*, 231 Ill. 2d 153, 159 (2008). *Fillmore v. Taylor*, 2017 IL App (4th) 160309, ¶ 99. But *Holly* never addressed whether the Code or Department regulations that govern internal prison operations create judicially enforceable rights for inmates, nor was that question raised by the parties.

In any event, reliance on *Holly* was misplaced. The appellate court noted that *Holly* discussed the three requirements for mandamus relief, and observed that "[n]otably absent from this description of mandamus is any requirement that the plaintiff-prisoner's affirmative right to relief be constitutional." *Fillmore*, 2017 IL App (4th) 160309, ¶ 99. It explained that the plaintiff in *Holly* alleged that under both statute and the Due Process Clause, he had a clear right to mandatory supervised release without the condition of electronic home monitoring. *Id*. Thus, the appellate court concluded, mandamus does not require a constitutional right to relief because *Holly* engaged in "five or so pages of statutory construction," analysis that "would have been pointless, if, as we said in *Ashley*, the only right a prisoner could vindicate in an action for mandamus was a constitutional right." *Id*.

The appellate court's analysis of *Holly* was wrong for two reasons. First, as discussed *supra* pp. 24, 26-28, while mandamus relief generally does not require a constitutional basis, prison is a unique setting and a prisoner's mandamus action generally *does* require a constitutional basis for the reasons

explained by the *Sandin-Ashley* line of cases. Indeed, *Sandin* specifically cautioned against dissecting the language in prison statutes and regulations to define rights and remedies because such an approach was "a good deal less sensible" in the prison setting. 515 U.S. at 481-82.

Second, the facts of *Holly* are distinguishable from those here because *Holly* involved a claim that the Prisoner Review Board exceeded its statutory authority. Specifically, the plaintiff in *Holly* argued that the Prisoner Review Board lacked the statutory authority to impose the condition of electronic home confinement as part of his mandatory supervised release. 231 Ill. 2d at 156. *Holly*, then addressed a question akin to those at issue in *Johnson* and *Kinney*, of whether the Board exceeded its statutory authority in imposing certain restrictions on the plaintiff. It did not answer whether the Board failed to comply with its own rules when imposing those restrictions. Whether an agency has the authority to act at all is different than whether an individual may sue to require an agency to comply with its own rules.

E. There are appropriate vehicles for inmates to enforce their rights, including due process challenges.

Ashley's holding does not prevent inmates from filing all lawsuits to redress alleged injuries or wrongs. For example, inmates may bring claims against the Department and its employees alleging negligence, *see Holt v. State*, 43 Ill. Ct. Cl. 195, 197 (Nov. 8, 1990), or intentional torts, *see Smith v. State of Ill.*, 52 Ill. Ct. Cl. 455, 456 (May 9, 2000). It also does not prevent inmates from suing to enforce constitutional rights that exist independent of

the Code or Department regulations. *See* 42 U.S.C. § 1983; *see also Turner*, 482 U.S. at 84; *Wolff*, 418 U.S. at 556.

Instead of holding that prison statutes, regulations, and directives create judicially enforceable rights, this Court should review Fillmore's action as one raising a procedural due process challenge via certiorari or mandamus. *See Dye v. Pierce*, 369 Ill. App. 3d 683, 687 (4th Dist. 2006) (allegation of due process violation states a cause of action in mandamus). When a court hears such a claim, the question is whether the minimum due process requirements set forth in *Wolff* were satisfied. *Wolff* held that inmates are entitled to certain due process protections during prison disciplinary proceedings that deprive an inmate of a protected liberty interest, specifically: (1) notice of the disciplinary charges at least 24 hours prior to the hearing; (2) an opportunity to call witnesses and present documentary evidence in his defense when consistent with institutional safety and correctional goals; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. 418 U.S. at 563-66. According to Fillmore's own allegations, he received each of these protections, and so the dismissal of his complaint should be affirmed on this basis.

1. Fillmore was served with the disciplinary report more than 24 hours before the Adjustment Committee hearing and received a written statement describing the evidence relied on for bringing the disciplinary action.

Fillmore was served with the disciplinary report on December 16, 2014 (C 25), and the Adjustment Committee hearing took place three days later on December 19, 2014 (C 34). He therefore received more than 24 hours' notice prior to the hearing. In addition, the Adjustment Committee provided a written statement describing the evidence relied on and the reasons for the disciplinary action. (C 25-C 29, C 34-C 35). Thus, these two *Wolff* requirements were met.

2. The Adjustment Committee's decision not to call Fillmore's witnesses did not violate his due process rights.

The Adjustment Committee's denial of Fillmore's witness requests did not violate due process because Fillmore did not follow the proper procedure to request witnesses. The disciplinary report form used at Lawrence provided the means for inmates to request witnesses. (C 17). The bottom of the report included a section for witness requests, and instructed Fillmore to include the name of his witnesses, badge or ID numbers, assigned cells if applicable, and a description of the subjects to which the witnesses would testify. (*Id.*) It also instructed Fillmore to "detach and return [the request] to the Adjustment Committee." (*Id.*) But the witness request form on Fillmore's disciplinary report is still attached and is blank. (*Id.*) Fillmore's due process rights, therefore, were not violated because he did not follow the required procedure

to request witnesses. *See Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118 (5th Dist. 2011).

Fillmore alleged that he requested eight witnesses be called and he claimed that each witness would testify that "[he] did not order or direct any security threat group activity within IDOC ever." (C 22). But Department regulations provide that an inmate "include an explanation of what the witnesses would state." 20 Ill. Admin. Code § 504.80(f)(2). This rule essentially requires an offer of proof as to the anticipated testimony of each witness, and "an offer of proof that merely summarizes the witness' testimony in a conclusory manner is inadequate." *Snelson v. Kamm*, 204 Ill. 2d 1, 23 (2003). Thus, Fillmore's later conclusory allegation regarding the expected witness testimony was insufficient and so did not comply with Department regulations, and therefore defendants did not violate his due process rights. *See Taylor*, 406 Ill. App. 3d at 1118.

But even if Fillmore had properly requested witnesses, a decision not to call the witnesses would not have violated Fillmore's due process rights. Under *Wolff*, inmates must be provided with an opportunity to call witnesses "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566. *Wolff* added that the "unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of

the institution." *Id*. Thus, *Wolff* acknowledged the need to "balance the inmate's interest in avoiding loss of good time against the needs of the prison," and allow prison officials the discretion to "keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence." *Id*. And inmates "do not have the right to call witnesses whose testimony would be irrelevant, repetitive, or unnecessary." *Pannell v. McBride*, 306 F.3d 499, 503 (7th Cir. 2002). Fillmore's alleged witness request was both unduly hazardous and repetitive.

Fillmore's alleged requests were unduly hazardous because he wanted eight witnesses called to testify that "[he] did not order or direct any security threat group activity within IDOC ever." (C 30). There were obvious security concerns implicated in a request for the prison to coordinate testimony from eight different inmates, particularly where five of them were known members of the Latin Kings security threat group. (C 26 – C 30); *see Miller v. Duckworth*, 963 F.2d 1002, 1005 (7th Cir. 1992) (holding that "the potential for disruption by accommodating [the inmate's witness request] cannot be overstated" where communication between inmate and witnesses "might pose a threat to security" and "certainly falls within 'the necessary discretion . . . to keep the hearing within reasonable limits'").

Even assuming that Fillmore had properly described the anticipated testimony of the witnesses, all eight would have provided the same testimony (C 30), which would have been unnecessarily cumulative; *see* 20 Ill. Admin. Code § 504.80(i)(4) (Adjustment Committee may deny request for witnesses if, among other things, the testimony would be cumulative); *see also Wolff*, 418 U.S. at 566 ("Prison officials must have the necessary discretion to *keep the hearing within reasonable limits* and to refuse to call witnesses that may create risk of reprisal or undermine authority . . . .") (emphasis added); *Ford v. Walker,* 377 Ill. App. 3d 1120, 1125 (4th Dist. 2007) (Department may deny inmate's request for witnesses if the testimony would be "irrelevant, cumulative, or would jeopardize the safety and disrupt the security of the facility, among other reasons). In addition, one witness was an inmate at a different Department facility. (C 30). Transporting an inmate from one correctional facility to another clearly would be a burden on the Department, particularly where Fillmore instead could have obtained an affidavit or other statement from that inmate.

3. The Adjustment Committee's decision to deny Fillmore's request for documentary evidence did not violate his due process rights.

Nor were Fillmore's due process rights violated by the Department's decision to deny his requests to review telephone logs, telephone recordings, or notes obtained during the cell searches. As to the logs, Fillmore argued that they would show that he did not use the telephone on the days specified in the

disciplinary report. (C 30). But it was the content of his conversations with his brother, not the dates of those conversations, that the Department used to establish that Fillmore was an active Latin Kings member. The telephone logs, therefore, would not be a defense to the charges against him, and so there was no due process violation in denying his request for those documents.

Fillmore claimed that the telephone recordings, when played in their entirety, would not substantiate the charges against him. (C 31). But Fillmore was not precluded from describing the content of the conversations to McCarthy and Cooper during the Adjustment Committee hearing. Thus, the denial of his request to listen to the telephone recordings, where he was a party to those conversations, did not impede his ability to defend himself. This, too, did not amount to a due process violation.

In addition, the Adjustment Committee's decision not to allow Fillmore to review the notes obtained during the cell searches did not violate due process. *Wolff* requires prison officials to provide inmates with documentary evidence only when it would "not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566. Fillmore argued below that he did not write the notes. (C 32). Given that, McCarthy and Cooper acted within their discretion to deny his request to view the notes which contained information regarding the Latin Kings, including names of individuals and inmates associated with the gang. Disclosing any additional information about the gang or these individuals could compromise the safety and security of the

prison. And the Supreme Court and this Court have both recognized that prison officials are entitled to deference when it comes to matters of safety and security in prisons. *See Bell*, 441 U.S. at 547 (prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security"); *Beahringer,* 204 Ill. 2d at 375 (prison administrators' decisions are entitled to "wide-ranging deference" as "[o]perating a prison is an extremely difficult undertaking that requires expertise").

4. Fillmore did not sufficiently allege a due process violation based on his allegation that McCarthy and Cooper were biased.

An inmate also has the due process right to appear before a disciplinary committee composed of impartial individuals. *Wolff*, 418 U.S. at 571. This constitutional right also is codified in the Department's regulations, which provide in relevant part:

> Any person who initiated the allegations that serve as the basis for the disciplinary report, or who conducted an investigation into those allegations, or who witnessed the incident, or who is otherwise not impartial shall not serve on the Adjustment Committee hearing that disciplinary report.

20 Ill. Admin. Code § 504.80(d). Moreover, "an offender who objects to a member of the Committee based on a lack of impartiality must raise the matter at the beginning of the hearing." *Id*. The Committee then must

"document the basis of the objection and the decision in the Adjustment Committee summary." *Id*.

But Adjustment Committee members are entitled to a presumption of honesty and integrity, and thus the constitutional standard for impermissible bias is high. *See Williams v. Dep't of Emp't Sec*., 2016 IL App (1st) 142376, ¶ 48. And to establish bias, the plaintiff "must show more than the mere possibility of bias or that the decision maker is familiar with the facts of the case." *Danko v. Bd. of Tr. of City of Harvey Pension Bd*., 240 Ill. App. 3d 633, 641 (1st Dist. 1992). A decision maker will not be considered biased even when he has publicly taken positions on issues related to the dispute, absent a showing that "he is not capable of judging a particular controversy fairly on the basis of its own circumstances." *Wolin v. Dep't of Fin. & Prof'l Regulation*, 2012 IL App (1st) 112113, ¶ 33; *see also Huff v. Rock Island Cty. Sheriff's Merit Comm'n*, 294 Ill. App. 3d 477, 481 (3d Dist. 1998) (no impropriety shown where board member had previously served as party's campaign manager); *Collura v. Bd. of Police Comm'n of Vill. of Itasca*, 113 Ill. 2d 361, 369-70 (1986) (no bias shown where administrative officer sat on another board for plaintiff's disciplinary hearing three years earlier).

Here, neither Cooper nor McCarthy was involved in the investigation regarding the disciplinary report. They reviewed the report, which detailed Fillmore's involvement with the Latin Kings and the evidence compiled against him to support the charges. (C 34). Nothing in the record indicates

that Cooper and McCarthy exhibited bias or prejudice in reviewing this information. *Cf. Epstein v. Lane*, 189 Ill. App. 3d 63, 65-66 (3d Dist. 1989) (inmate sufficiently alleged bias where chairman of adjustment committee hearing was the prison counselor who brought charges against inmate and had also testified against inmate during grand jury proceedings).

Fillmore alleged in his complaint that during the hearing Cooper said that the Committee was "directed by higher up prison authorities to find plaintiff guilty." (C 14). Even assuming that was so, Fillmore's due process claim still would fail. He did not allege that Cooper and McCarthy were unable to objectively review the evidence included in the disciplinary report, or that Cooper and McCarthy found him guilty only because they were told to do so. Indeed, the totality of the evidence, including the telephone records, the notes found in Fillmore's cell, and the identification of Fillmore as a Latin King by a confidential informant, supported McCarthy and Cooper's decision. Accordingly, Fillmore's allegations failed to overcome the presumption of impartiality.

In any event, as indicated, even if this Court were to conclude that the Adjustment Committee hearing did not comply with *Wolff*'s due process requirements, that would not justify a departure from *Sandin*, *Ashley,* and the cases that followed those holdings. Instead, the Court should hold that Fillmore stated a mandamus claim based on a violation of his right to due process and remand for further proceedings on that claim. In doing so,

however, the Court should affirm the longstanding line of cases in Illinois holding that an inmate does not have an independent cause of action based on a violation of a statute, regulation, or directive that governs internal prison operations because those do not create judicially enforceable rights for inmates beyond what already is protected by the federal and state constitutions.

CONCLUSION

For these reasons, Defendants-Appellants request that this Court hold that Rule 367 does not bar a party from filing a timely petition for rehearing where the appellate court's judgment was adverse to both parties, and where the appellate court had already denied a petition filed by another party. In addition, Defendants-Appellants request that this Court reverse the judgment of the appellate court and hold that the Code and Department regulations and directives governing internal prison operations do not create judicially enforceable rights for inmates and that Fillmore was afforded all the process he was due during the Adjustment Committee hearing. Or, if this Court determines that Fillmore was not afforded due process, it should hold that Fillmore stated a mandamus claim based on his right to due process and remand for further proceedings, while also affirming that an inmate does not have an independent cause of action based on violation of the Code or Department regulations or directives that govern internal prison operations. In the alternative, Defendants-Appellants request that this Court order that

their rehearing petition be accepted and filed by the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h) statement of points and authorities, the Rule 314(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 12,950 words.

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DEFENDANTS-APPELLANTS' APPENDIX

DEFENDANTS-APPELLANTS' APPENDIX TABLE OF CONTENTS

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

AARON FILLMORE, #B-63343,

Plaintiff,

-vs-

GLADYSE TAYLOR, et al.,

Defendants.

No. 15-MR-915

FILED
MAY 06 2016
26
Clerk of the Circuit Court

ORDER

This matter coming before the Court on Defendants' Motion to Dismiss on April 5, 2016, both parties present and the Court being fully advised in the premises, the Court finds that:

1. Plaintiff has no right to the relief requested; and

2. Plaintiff received all due process required under *Wolff*.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is **GRANTED** and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE.**

This is a final and appealable order.

Entered: 5/6/16

JUDGE

C 100

A 1

FILED
July 12, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160309

NO. 4-16-0309

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

AARON FILLMORE, Plaintiff-Appellant, v. GLADYSE C. TAYLOR, Director of Corrections; LEIF M. McCARTHY, Chairperson of the Adjustment Committee; and ELDON L. COOPER, Member of the Adjustment Committee. Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 15MR915 Honorable Rudolph M. Braud, Jr., Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court, with opinion.
Justices Pope and Knecht concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Aaron Fillmore, who is in the custody of the Illinois Department of Corrections (Department), sued three officers of the Department, Gladyse C. Taylor, Leif M. McCarthy, and Eldon L. Cooper, for failing to follow mandatory legal procedures before imposing discipline upon him for violating prison rules. He sought a writ of *mandamus*, declaratory relief, and a common-law writ of *certiorari*. The trial court granted a motion by defendants to dismiss the complaint for failure to state a cause of action. See 735 ILCS 5/2-615 (West 2016). Plaintiff appeals.

¶ 2 In our *de novo* review, we agree with the trial court that the count for declaratory judgment, count II, is legally insufficient in its entirety. We disagree, however, that the

remaining two counts are legally insufficient in their entirety. Therefore, we affirm the trial court's judgment in part and reverse it in part, and we remand this case for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 In his complaint, which he filed on September 14, 2015, plaintiff alleged substantially as follows.

¶ 5 A. The Parties

¶ 6 Plaintiff is an inmate at Lawrence Correctional Center, in Sumner, Illinois.

¶ 7 Gladyse C. Taylor is the Department's director.

¶ 8 Leif M. McCarthy is the chairperson of the adjustment committee at Lawrence Correctional Center, the committee that hears and decides inmate disciplinary reports.

¶ 9 Eldon L. Cooper is a member of the adjustment committee.

¶ 10 B. The Inmate Disciplinary Report Issued to Plaintiff

¶ 11 On December 16, 2014, an inmate disciplinary report was served on plaintiff. In the report, a correctional officer named "J. Harper" accused plaintiff of two offenses as defined by the Department's regulations: security group threat or unauthorized organizational activity (20 Ill. Adm. Code 504.Appendix A (2003) (No. 205)) and intimidation or threats (*id.* (No. 206)). The report summarized the following evidence: (1) an "accumulation of incidents" concerning plaintiff's "involvement with the Latin Kings Security Threat Group," including statements of confidential informants, one of whom identified plaintiff as chairman of the Latin King National Regional Crown Council; (2) handwritten notes, confiscated in a shakedown, in which he discussed Latin King business and, in one note, expressed a desire to "kick *** down

the steps" someone named Kevin, who had "told Springfield a lot" about the gang; and (3) recorded telephone conversations, in which plaintiff discussed various Latin King members who were in prison.

¶ 12 C. Witness Request

¶ 13 On December 16, 2014, plaintiff submitted to the adjustment committee a document, handwritten by him, in which he requested the committee to review the "[p]hone log records" for May 5, September 29, and October 12, 2014. He stated that those phone records would disprove the allegation, in the disciplinary report, that he made outgoing telephone calls on those days. He also "request[ed] to be shown these alleged notes" by him, confiscated in the shakedown. Finally, he made an "inmate witness request," listing the imprisoned Latin Kings whom he allegedly had discussed on the telephone. He wrote: "Each inmate will testify that [plaintiff] did not order or direct any security threat group activity within [the Department] ever."

¶ 14 D. Plaintiff's Written Statement to the Committee

¶ 15 On December 19, 2014, in the hearing on the inmate disciplinary report, plaintiff presented a handwritten statement to the committee. In this statement, he began by pleading not guilty to the two charges. Then he made essentially four points.

¶ 16 First, he denied the allegation, in the disciplinary report, that he made "outside telephone calls" on May 5, August 30, and September 29, 2014. He wrote that if only the committee would review the "B-Wing telephone log records," those records would show he did not use the telephone on those dates.

¶ 17 Second, he insisted that if there were any recordings of his telephone calls, those recordings, when played in their entirety, would debunk the claim that he had engaged in unauthorized organizational activity.

¶ 18 Third, he denied writing the notes cited in the disciplinary report. He also denied the notes had come from his cell, property, or person, or that there were any shakedown records indicating as much. He pointed out that Harper was not a handwriting expert.

¶ 19 Fourth, he claimed the disciplinary report was untimely under the Department's regulations because it "was written beyond the [eight] days allowed after the commission of the offense or discovery thereof." 20 Ill. Adm. Code 504.30(f) (2003). He noted that the report listed the dates of "February of 2014[;] May 5, 2014[;] July 15, 2014[;] August 30, 2014[;] September of 2014[;] October 13, 2014[;] and December 7, 2014"—all of which preceded the issuance of the report, on December 16, 2014, by more than eight days.

¶ 20 His written statement concluded with the following paragraph: "I request to see the alleged confiscated 'notes' regarding the [December 16, 2014,] disciplinary report, and request that my December 16, 2014[,] witness and document request be reviewed and considered as exculpatory evidence by the Committee."

¶ 21 E. The Disciplinary Hearing

¶ 22 Plaintiff alleges that, in the disciplinary hearing, which was held on December 19, 2014, the two members of the adjustment committee, McCarthy and Cooper, declined to show him the notes in question and declined to personally review the notes, the telephone logs, or the telephone recordings. As for plaintiff's witness request, "Cooper stated that Jerry Harper (the prison official who wrote the [disciplinary report] against plaintiff) [had] directed the Committee

not to call any of plaintiff's witnesses[;] thus, no witnesses would be called." Also, Cooper told plaintiff, in the disciplinary hearing, "that the Committee [had been] directed by higher[-]up prison authorities to find plaintiff guilty and revoke a year [of] good conduct credits and impose punitive segregation and other punitive sanctions for a year." Upon receiving that news, plaintiff "made a verbal objection" to the committee's lack of impartiality, but McCarthy and Cooper "refused to recuse themselves." All this is according to plaintiff's complaint.

¶ 23 F. The Final Summary Report

¶ 24 On January 3, 2015, the Department served upon plaintiff a "Final Summary Report," in which McCarthy and Cooper found plaintiff guilty of "Gang or Unauthorized Organization Activity" and "Intimidation or Threats." They recommended one year in "C grade," one year of segregation, revocation of one year of good-conduct credits, restriction for one year to $15 per month, and one year of "Contact Visits Restriction." The chief administrative officer, Stephen B. Duncan, approved the recommendation.

¶ 25 G. Plaintiff's Grievance

¶ 26 On January 5, 2015, plaintiff administratively appealed the discipline by filing a grievance. He complained of the committee members' refusal to produce and personally review the notes, telephone logs, and telephone recordings; their refusal to recuse themselves; the untimeliness of the disciplinary report; and other irregularities, which we will discuss in greater detail later in this opinion.

¶ 27 On August 13, 2015, by adding her signature to a form, Taylor concurred with the denial of plaintiff's grievance. The Department "[found] no violation of the offender's due

process in accordance with [sections 504.30 and 504.80 (20 Ill. Adm. Code 504.30, 504.80 (2003))]," to quote the check-marked preprinted language of the form. The Department was "reasonably satisfied the offender committed the offense cited in the report."

¶ 28 II. ANALYSIS

¶ 29 A. The Request for *Mandamus* (Count I)

¶ 30 Because the motion for dismissal was pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), the question is whether the complaint states a cause of action for *mandamus*, declaratory relief, or a common-law writ of *certiorari*: the three forms of relief that plaintiff sought in the three counts of his complaint. See *Johannesen v. Eddins*, 2011 IL App (2d) 110108, ¶ 27.

¶ 31 We answer that question *de novo*, taking the well-pleaded facts or specific factual allegations of the complaint to be true and disregarding any conclusory allegations unsupported by well-pleaded facts. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 26; *Primax Recoveries, Inc. v. Atherton*, 365 Ill. App. 3d 1007, 1010 (2006). Not only will we assume the well-pleaded facts in the complaint to be true, but we will regard those facts in the light most favorable to plaintiff. See *Johannesen*, 2011 IL App (2d) 110108, ¶ 27. If, from the well-pleaded facts, a reasonable inference could be drawn in plaintiff's favor—which is to say, in favor of the legal sufficiency of the complaint—we will draw that inference. See *id.* "Dismissal pursuant to section 2-615 *** is only proper where, when construing the allegations of the complaint in the light most favorable to plaintiff, it clearly appears that no set of facts can be proved under the pleadings which will entitle the plaintiff to recover." *Armstrong v. Snyder*, 336 Ill. App. 3d 567, 568-69 (2003).

¶ 32 With those ground rules in mind, we first evaluate the legal sufficiency of count I, the count seeking *mandamus*. By its factual allegations, count I must establish three propositions. First, under the law, plaintiff has a clear right to the performance of the ministerial act that he seeks to compel the public officer to perform. See *Burris v. White*, 232 Ill. 2d 1, 7 (2009); *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109 (1997). Second, plaintiff demanded that the public officer perform the act (unless such a demand would have been futile), and the public officer refused to do so. See *Eley v. Cahill*, 126 Ill. App. 2d 272, 276-77 (1970). Third, the public officer has clear authority to comply with the proposed writ of *mandamus*. See *Burris*, 232 Ill. 2d at 7.

¶ 33 Plaintiff argues that defendants have both authority and a duty to comply with the Department's regulations. We do not understand defendants as disputing that argument. "Administrative regulations have the force and effect of law" (*People v. Bonutti*, 212 Ill. 2d 182, 188 (2004)), and a prisoner may file a complaint for *mandamus* to compel correctional officers to perform nondiscretionary duties laid down in the Department's regulations (*West v. Gramley*, 262 Ill. App. 3d 552, 557 (1994); *Shea v. Edwards*, 221 Ill. App. 3d 219, 221 (1991); *Taylor v. Franzen*, 93 Ill. App. 3d 758, 765 (1981))—assuming the prisoner has a substantial personal interest in the matter (see *Warden v. Byrne*, 102 Ill. App. 3d 501, 506 (1981); *North v. Board of Trustees of the University of Illinois*, 137 Ill. 296, 301 (1891)).

¶ 34 Citing several paragraphs of his complaint, plaintiff argues he specifically alleged violations of the Department's regulations and that *mandamus* should compel compliance with these regulations. We will discuss the alleged violations one by one.

¶ 35 1. *Review of the Inmate Disciplinary Report by a Hearing Investigator*

¶ 36 Under section 504.60(a), "[t]he Chief Administrative Officer shall appoint one or more Hearing Investigators[,] who shall review all *major* disciplinary reports." (Emphasis added.) 20 Ill. Adm. Code 504.60(a) (2003). Plaintiff claims the Department violated this section. In support of his claim, he references the inmate disciplinary report, a copy of which is attached to his complaint as exhibit A: in the report, the box next to "Hearing Investigator's Review Required" is blank, as is the line for the hearing officer's signature.

¶ 37 Evidently, judging by exhibit A, the Department decided a hearing investigator's review was not required in this case. Necessarily, that decision entailed the exercise of judgment, because a hearing investigator's review was required only for "major" disciplinary reports, and it was a matter of judgment whether a disciplinary report was "major." *Id.*

¶ 38 No doubt, plaintiff would regard that decision as a misjudgment or an abuse of discretion, but the conscientiousness of the exercise of judgment or discretion is beside the point. The question is not whether the exercise of judgment or discretion was sound; the question is whether the exercise of judgment or discretion was required. *Mandamus* "will *not* be granted when the act in question involves the exercise of discretion." (Emphasis in original.) *The Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 35. The act that the plaintiff seeks to compel in a *mandamus* action must be purely ministerial in nature, involving no use of judgment. *Id.* This act involved the use of judgment. Thus, with respect to the omission of a hearing investigator's review, plaintiff states no cause of action for *mandamus*.

¶ 39 2. *Failure To Serve the Disciplinary Report Upon Plaintiff by the Regulatory Deadline*

¶ 40 Section 504.30(f) provides as follows: "Service of a disciplinary report upon the offender shall commence the disciplinary proceeding. In no event shall a disciplinary report ***

be served upon an adult offender more than [eight] days *** after the commission of an offense or the discovery thereof unless the offender is unavailable or unable to participate in the proceeding." 20 Ill. Adm. Code 504.30(f) (2003).

¶ 41 Plaintiff alleges the disciplinary report was issued on December 16, 2014, and that the disciplinary report "lists incident dates of February of 2014; May 5, 2014; July 15, 2014; August 30, 2014; September of 2014; October 13, 2014[;] [and] December 7, 2014"—all of which predate the issuance of the disciplinary report by more than eight days. Obviously, the disciplinary report could not have been served upon him before it was issued. He argues that, because of the Department's failure to meet the eight-day deadline for serving the disciplinary report on him, the Department has a clear duty, under section 504.30(f), to withdraw the disciplinary report and the associated penalties. See *id.*

¶ 42 Even this eight-day deadline, however, requires the exercise of judgment or discretion: "In no event shall a disciplinary report *** be served upon an adult offender more than [eight] days *** *after the commission of an offense or the discovery thereof* unless the offender is unavailable or unable to participate in the proceeding." (Emphasis added.) *Id.* It requires judgment to determine whether and when an offense was committed. An evaluation must be performed. The Department must compare the known facts with the elements of the offense and must reach a conclusion. For that matter, it requires judgment to determine whether the offender is able to participate in the proceeding. No doubt plaintiff would argue that judgment, under these circumstances, could have been soundly exercised in only one way. Even so, judgment had to be exercised. It follows that the Department's duty under section 504.30(f) is not purely ministerial and that, with respect to the alleged noncompliance with the eight-day

deadline in that section, plaintiff states no cause of action for *mandamus*. See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35.

¶ 43 3. *Failure To Provide a Written Reason for Denying Plaintiff's Request for the In-Person Testimony of Witnesses*

¶ 44 Plaintiff claims the Department violated section 504.80(h)(4) of its regulations (20 Ill. Adm. Code 504.80(h)(4) (2003)) by failing to provide a written reason for denying his request for the in-person testimony of witnesses at his disciplinary hearing.

¶ 45 Defendants respond that plaintiff failed to fulfill a procedural precondition. They observe that, under section 504.80(f)(2) (20 Ill. Adm. Code 504.80(f)(2) (2003)), "[t]he [witness] request [had to] be in writing on the space provided in the disciplinary report" and that the request had to "include an explanation of what the witnesses would state." Instead of using the designated space in the disciplinary report to request witnesses, plaintiff used a separate sheet of paper, and he did not explain what the witnesses would state. On the authority of *Taylor v. Frey*, 406 Ill. App. 3d 1112, 1118 (2011), defendants argue the Department was within its discretion to refuse to hear witnesses, given that plaintiff never requested them in the manner that subsection (f)(2) required.

¶ 46 To clarify, under the Department's regulation, there are two kinds of requests for witnesses: a request for the prehearing interview of witnesses (20 Ill. Adm. Code 504.80(f)(2) (2003)) and a request for the in-person testimony of witnesses in the disciplinary hearing (20 Ill. Adm. Code 504.80(h)(3) (2003)). It is unclear which kind of witness request plaintiff intended to make. Was he requesting a prehearing interview of the witnesses pursuant to subsection (f)(2), or was he requesting the in-person testimony of the witnesses pursuant to subsection (h)(3)? In his request, a copy of which is attached to the complaint as exhibit B, he confusingly cited both

subsection (f)(2) and subsection (h)(3). If he meant to request the prehearing interview of witnesses pursuant to subsection (f)(2), he would have had to do so in the space provided in the disciplinary report (see 20 Ill. Adm. Code 504.80(f)(2) (2003) ("The request shall be in writing on the space provided in the disciplinary report and shall include an explanation of what the witnesses would state.")). He did not do so. Whether that omission was problematic depended on which kind of witness request he was making—and, in that respect, his witness request was unclear. His request did not specifically say what he wanted the Department to do: interview the witnesses ahead of time or arrange for their attendance in the disciplinary hearing, and as we noted, his request cited both subsection (f)(2) and subsection (h)(3).

¶ 47 Because of this ambiguity in his request, the Department had no "clear duty" to provide a written reason for denying the request. *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 467-68 (1989). That duty under section 504.80(h)(4) (20 Ill. Adm. Code 504.80(h)(4) (2003)) would have kicked in only if plaintiff requested the in-person attendance of witnesses. It is unclear if he did so. Therefore, the Department had no clear duty, under section 504.80(h)(4), to provide a written reason for the denial. It follows that, with respect to the Department's alleged failure to provide a written reason for denying the in-person attendance of witnesses (see *id.*), plaintiff states no cause of action for *mandamus*.

¶ 48 4. *Failure To Place Plaintiff Under Investigation*

¶ 49 Plaintiff claims the Department violated section 504.30(e) (20 Ill. Adm. Code 504.30(e) (2003)) in that the Department "never placed [him] under investigation." That section provides: "If an offender is suspected of committing a disciplinary offense, an investigative disciplinary report, hereinafter referred to as an investigative report, *may* be issued that

reasonably informs the offender of the subject of the investigation to the extent that safety and security allow." (Emphasis added.) *Id.* Because the word "may" calls for an exercise of discretion (*Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006)), and because *mandamus* may compel the performance of only a nondiscretionary, ministerial duty (*Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35), we conclude that, with respect to the alleged violation of section 504.30(e), plaintiff states no cause of action for *mandamus*.

¶ 50 5. *The Committee's Failure To Independently Review the Notes and the Telephone Logs and Recordings*

¶ 51 Plaintiff claims the committee members violated section 504.80(g) (20 Ill. Adm. Code 504.80(g) (2003)) by failing to independently review the notes and the telephone logs and recordings, as opposed to relying merely on summaries and quotations provided by other correctional officers.

¶ 52 Section 504.80(g) consists of a single sentence, which reads as follows: "The Committee shall consider all material presented that is relevant to the issue of whether or not the offender committed the offense." *Id.* It requires an exercise of judgment to determine which materials are relevant—even if relevance should be obvious. Therefore, with respect to the alleged violation of section 504.80(g), plaintiff fails to state a cause of action for *mandamus*. See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35.

¶ 53 In so holding, we acknowledge the federal cases that plaintiff cites. Those cases found a due-process violation (or at least an arguable due-process violation) in the refusal of a prison disciplinary tribunal to produce incriminating documents allegedly written by the prisoner (*Young v. Kann*, 926 F.2d 1396, 1397 (3d Cir. 1991); *Scarpa v. Ponte*, 638 F. Supp. 1019, 1023 (D. Mass. 1986)) or in the refusal to review primary evidentiary materials as opposed to

secondhand summaries of those materials (*McIntosh v. Carter*, 578 F. Supp. 96, 98 (W.D. Ky. 1983)). For two reasons, however, we find those federal cases to be inapposite. First, decisions of the United States District Court and the Court of Appeals do not establish Illinois law (see *People v. Pitzman*, 293 Ill. App. 3d 282, 291 (1997)), and, thus, they do not establish a "clear duty" on the part of defendants (*Burris*, 232 Ill. 2d at 7). Second, none of those federal cases sought *mandamus*.

¶ 54 6. *The Committee's Refusal To Produce the Notes*

¶ 55 Plaintiff alleges that, both before and during the disciplinary hearing, he requested to see the notes he allegedly had written and that the Department denied those requests, thereby violating section 504.80(f)(1) (20 Ill. Adm. Code 504.80(f)(1) (2003)).

¶ 56 Under section 504.80(f)(1), "[t]he offender may *** produce any relevant documents in his or her defense." *Id.* Thus, instead of having the right to present any and all documents in his or her defense, the offender has a right to present only "relevant" documents in his or her defense. *Id.* To decide whether a document is presentable in the disciplinary hearing, the Department has to decide whether it is relevant. Because the determination of relevancy requires an exercise of judgment, plaintiff fails to state a cause of action for *mandamus* with respect to the alleged violation of section 504.80(f)(1). See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35. Again, it does not matter if judgment could have been reasonably exercised in only one way; judgment is judgment.

¶ 57 7. *The Committee Members' Refusal To Recuse Themselves*

¶ 58 Plaintiff argues the committee members should have recused themselves because, having been directed by higher-up prison authorities to find him guilty and to impose particular penalties, they lacked impartiality.

¶ 59 The asserted duty of recusal, however, would not have been a *ministerial* duty. Rather, the committee members would have had to perform a legal evaluation: they would have had to judge whether, in the light of relevant case law, the alleged directive from above disqualified them from being impartial hearing officers. Therefore, with respect to their refusal to recuse themselves, plaintiff fails to state a cause of action for *mandamus*. See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35.

¶ 60 8. *Failure To Follow a Required Procedure After a Prisoner Objects to Committee Members on the Ground of Their Lack of Impartiality*

¶ 61 In his complaint, plaintiff makes the following factual allegations, which, again, for purposes of section 2-615, we assume to be true. See *Schweihs*, 2016 IL 120041, ¶ 27. In the disciplinary hearing, one of the defendants, Eldon L. Cooper, who was a member of the adjustment committee, told plaintiff "that the Committee [had been] directed by higher[-]up prison authorities to find plaintiff guilty and revoke a year['s] good conduct credit and impose punitive segregation and other punitive sanctions for a year." Plaintiff immediately made a verbal objection to the committee members' lack of impartiality, but they refused to recuse themselves. Afterward, in its final summary report, the committee made no mention of plaintiff's objection to the committee members' lack of impartiality.

¶ 62 Plaintiff argues this omission violated section 504.80(d) (20 Ill. Adm. Code 504.80(d) (2003)), which provides as follows: "Any person *** who is *** not impartial shall not serve on the Adjustment Committee hearing that disciplinary report. An offender who objects

to a member of the Committee based on a lack of impartiality must raise the matter at the beginning of the hearing. *The Committee shall document the basis of the objection and the decision in the Adjustment Committee summary*." (Emphasis added.)

¶ 63 Plaintiff alleged he made a timely objection to the committee members' lack of impartiality, and the committee had a clear, nondiscretionary duty, under section 504.80(d), to "document the basis of the objection and the decision in the Adjustment Committee summary." *Id.* In the grievance that plaintiff filed on January 5, 2015, one of his complaints was that the committee had "arbitrarily failed to document [his] objections concerning the Committee['s] not being impartial, in violation of [section] 504.80(d)." The Department denied his grievance. Therefore, in this context, all the elements of *mandamus* are present: "a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the [proposed] writ." *Burris*, 232 Ill. 2d at 7. With respect to the Department's noncompliance with section 504.80(d), plaintiff states a cause of action for *mandamus*.

¶ 64 9. *Failure To Include a Summary of Plaintiff's Written Statement*

¶ 65 Section 504.80(*l*)(1) provides as follows:

> "l) A written record shall be prepared and signed by all members of the Committee that contains:
>
> 1) A summary of oral and written statements and other evidence presented." 20 Ill. Adm. Code 504.80(*l*)(1) (2003).

Subsection (o) provides: "A copy of the disciplinary report and Adjustment Committee summary shall be forwarded to the Chief Administrative Officer for review and approval and a copy shall be filed in the offender's record." 20 Ill. Adm. Code 504.80(o) (2003). Apparently, the summary

of the offender's written statement is part of what the "Chief Administrative Officer" would review in deciding whether to approve the "Adjustment Committee dispositions." 20 Ill. Adm. Code 504.80(p) (2003).

¶ 66 Plaintiff alleges that although, in the disciplinary hearing, he submitted to the adjustment committee a written statement (exhibit C of the complaint), the committee's final summary report (exhibit D) lacks a summary of his written statement. Plaintiff subsequently complained, in his grievance (exhibit E), that the committee had "failed to give a summary of [his] written statement, in violation of [section] 504.80(*l*)(1)," but the Department denied his grievance.

¶ 67 Because the committee members had a clear ministerial duty to include, in the administrative record, signed by them, a summary of plaintiff's written statement (see 20 Ill. Adm. Code 504.80(*l*)(1) (2003)), plaintiff states a cause of action for *mandamus* in this respect. See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35; *Thompson v. Lane*, 194 Ill. App. 3d 855, 863 (1990) (this regulatory requirement of summarizing all the evidence, including the oral and written statements, "is not to be taken lightly").

¶ 68 B. The Request for a Declaratory Judgment (Count II)

¶ 69 We have held that an action for a common-law writ of *certiorari*, instead of an action for a declaratory judgment, is the correct means by which to seek the review of penalties imposed in a prison disciplinary proceeding. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253 (2001). Therefore, plaintiff fails to state a cause of action for a declaratory judgment. See *id.*

¶ 70 C. The Request for a Common-Law Writ of *Certiorari* (Count III)

¶ 71 1. *The Availability of a Common-Law Action for* Certiorari

¶ 72 If an administrative agency issues a quasi-judicial decision (*McKeown v. Moore*, 303 Ill. 448, 453 (1922)) and the statute conferring power on the agency does not adopt the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)) or provide any other method of judicial review, the decision is reviewable in an action for a common-law writ of *certiorari* (*Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996)). Because the statutory provisions pertaining to prison disciplinary procedures (730 ILCS 5/3-8-7 to 3-8-10 (West 2014)) neither adopt the Administrative Review Law nor provide any other method of judicial review, prison disciplinary proceedings are reviewable in an action for *certiorari*. *Alicea*, 321 Ill. App. 3d at 253.

¶ 73 2. *The Nature of a Common-Law Action for* Certiorari

¶ 74 Whereas *mandamus* compels a governmental official to perform a ministerial act, a common-law writ of *certiorari* "bring[s] before the court issuing it the record of the inferior tribunal for review." *Barden v. Junior College District No. 520*, 132 Ill. App. 2d 1038, 1038 (1971); see also *People ex rel. Elmore v. Allman*, 382 Ill. 156, 160 (1943). The circuit court will issue a writ of *certiorari* to the agency, and within the time specified in the writ (see *Murphy v. Cuesta, Rey & Co.*, 381 Ill. 162, 168 (1942)), the agency must provide the court with the record of the administrative proceedings so that the court can determine from the record—and only from the record (*Reichert v. Court of Claims*, 203 Ill. 2d 257, 260 (2003); *Goodfriend v. Board of Appeals*, 18 Ill. App. 3d 412, 418-19 (1973))—whether the agency acted within its statutory authority and in accordance with the law (*Funkhouser v. Coffin*, 301 Ill. 257, 260 (1921); *Goodfriend*, 18 Ill. App. 3d at 418-19). The burden will be on the agency to provide a record

adequate to that purpose: a record consisting of facts, not mere conclusions (*Funkhouser*, 301 Ill. at 261). *Frye v. Hunt*, 365 Ill. 32, 37 (1936) ("Where the question is whether jurisdictional facts were established, mere conclusions of law are insufficient and the record must show the existence of the facts required to authorize the inferior tribunal or officer to act, and this evidence may properly be reviewed by the court."); *Funkhouser*, 301 Ill. at 264 ("The record made on the return of the writ failing to show any facts upon which [the] removal [of the appellee from his municipal employment] was justified, the trial court erred in quashing the writ and in not granting the motion of the appellee to quash the original [(administrative)] proceedings [for his removal].").

¶ 75 After reviewing the record from the inferior tribunal, the trial court should enter either of two judgments. If, from the record, it appears that the inferior tribunal lacked jurisdiction or that its actions were inconsistent with the law, the court may quash the proceedings of the inferior tribunal. *Goodfriend*, 18 Ill. App. 3d at 419. Alternatively, if, from the record, it appears that the inferior tribunal had jurisdiction and that its actions were consistent with the law, the court should dismiss the *certiorari* count and quash the writ. *Id.*

¶ 76 3. *The Pleading Requirements*

¶ 77 A petition for a common-law writ of *certiorari* must allege "good cause" for the issuance of a writ (*City of Chicago v. Condell*, 224 Ill. 595, 597 (1906)): the petition must allege that the inferior tribunal or the agency exercising a quasi-judicial function (*Reichert*, 203 Ill. 2d at 260) failed to comply with the law or exceeded its authority (*City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, ¶ 14), with the result that the petitioner suffered "substantial injury or injustice" (*Stratton v. Wenona Community Unit District No. 1*, 133 Ill. 2d

413, 428 (1990)). If the plaintiff (1) was a party to the administrative proceeding (*Board of Education of Woodland Community Consolidated School District 50 v. Illinois State Charter School Comm'n*, 2016 IL App (1st) 151372, ¶ 39); (2) was substantially injured by the agency's failure to follow an essential procedural requirement applicable to such a proceeding (*id.*; *C&K Distributors, Inc. v. Hynes*, 122 Ill. App. 3d 525, 528 (1984)); and (3) has no other method of review (*Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 333 (2009)), the plaintiff has a cause of action for *certiorari*.

¶ 78 Taking the well-pleaded facts of the complaint to be true (see *Schweihs*, 2016 IL 120041, ¶ 27), as opposed to conclusions, which we disregard (see *Johannesen*, 2011 IL App (2d) 110108, ¶ 27), and resolving all reasonable inferences in plaintiff's favor (see *Schweihs*, 2016 IL 120041, ¶ 27; *Johannesen*, 2011 IL App (2d) 110108, ¶ 27), we see two failures to comply with law that arguably caused substantial injury or injustice to him.

¶ 79 4. *Refusal To Produce the Notes in Question*

¶ 80 First, plaintiff alleges that, both before and during the disciplinary hearing, he requested to see the notes he allegedly had written. In exhibit B of the complaint, addressed to the adjustment committee and dated December 16, 2014, plaintiff stated: "I request to be shown the alleged 'notes.' " In exhibit C of the complaint, likewise addressed to the adjustment committee and dated December 19, 2014, he cited section 504.80(f)(1) (20 Ill. Adm. Code 504.80(f)(1) (2003)) and stated: "I request to see the alleged confiscated 'notes' regarding the 12-16-14 disciplinary report, and request that my December 16, 2014[,] witness and document request be reviewed and considered as exculpatory evidence by the Committee." Without explanation, the committee refused to produce the notes in the disciplinary hearing, or so

plaintiff alleges in his complaint. Afterward, in his grievance, plaintiff complained: "The Committee arbitrarily failed to review or allow me to review the alleged 'notes' stated in the 12-16-14 [inmate disciplinary report]." The Department denied the grievance, "find[ing] no violation of the offender's due process in accordance with [sections 504.80 (20 Ill. Adm. Code 504.80 (2003)) and 504.30 (20 Ill. Adm. Code 504.30 (2003))]."

¶ 81 Under section 504.80(f)(1) (20 Ill. Adm. Code 504.80(f)(1) (2003)), "[t]he offender may *** produce any relevant documents in his or her defense." Thus, the Department had a duty to allow plaintiff to produce any relevant documents in his defense. Given that the disciplinary report cited the notes as evidence against plaintiff, it would be untenable to characterize the notes as irrelevant. The Department was required to follow its own regulations (see *Thompson*, 194 Ill. App. 3d at 860), and it was the Department's duty, under section 504.80(f)(1), to allow plaintiff to "produce" the notes in his own defense. 20 Ill. Adm. Code 504.80(f)(1) (2003). One of the meanings of "produce" is to "show *** (something) for consideration" or "inspection." The New Oxford American Dictionary 1359 (2001). If, in his own defense, plaintiff wanted to show the notes in question, to prove he was not their author, and if the Department had exclusive possession of the notes and refused to relinquish them for his use in the disciplinary hearing, the Department violated its regulatory duty to allow plaintiff to "produce any relevant documents in his *** defense" (20 Ill. Adm. Code 504.80(f)(1) (2003)). See also *Thompson*, 194 Ill. App. 3d at 859 (one of the due-process rights of a prisoner in a prison disciplinary proceeding is to "present documentary evidence in his defense"). The alleged violation of section 504.80(f)(1) is significant and in itself would justify the issuance of a common-law writ of *certiorari*. See *Stratton*, 133 Ill. 2d at 428; *Condell*, 224 Ill. at 597; *City of Kankakee*, 2013 IL App (3d) 120599, ¶ 14; *Tanner v. Court of Claims*, 256 Ill. App. 3d 1089,

1092 (1994) ("Where a plaintiff brings into issue the alleged violation of his procedural and substantive rights, the petition is not subject to dismissal, as such issue cannot be determined as a matter of law upon the bare allegations of the petition.").

¶ 82 In response to a writ of *certiorari*, the Department should be required to produce an administrative record showing that, contrary to plaintiff's allegation (which, for purposes of the motion for dismissal, we take as true (see *Schweihs*, 2016 IL 120041, ¶ 27)), the Department produced the notes in question so that plaintiff could use them, in his own defense, in the disciplinary hearing.

¶ 83 5. *The Refusal of the Committee Members To Recuse Themselves*

¶ 84 Second, plaintiff alleges the committee members should have recused themselves because, having been directed by higher-up prison authorities to find him guilty and to impose particular penalties, they lacked impartiality. In a disciplinary hearing, the prisoner has a due-process right to, among other things, an impartial hearing officer. *Epstein v. Lane*, 189 Ill. App. 3d 63, 64 (1989).

¶ 85 We begin with the presumption that the members of the adjustment committee were "objective and capable of fairly judging the issues." *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 330 (2009). Like all presumptions, however, that presumption is rebuttable. "Bias or prejudice may *** be shown if a disinterested observer might conclude that the official had in some measure adjudged the facts as well as the law of the case in advance of hearing it." *Id.* Taking the well-pleaded facts of the complaint to be true and drawing all reasonable inferences in plaintiff's favor (see *Schweihs*, 2016 IL 120041, ¶ 27; *Johannesen*, 2011 IL App (2d) 110108, ¶ 27), a disinterested observer might conclude that the members of the

adjustment committee had prejudged the case before hearing it, considering it is alleged that (1) they personally examined none of the primary evidentiary materials; (2) Cooper told plaintiff, in the hearing, that their superiors had ordered them to find him guilty and to impose certain penalties; and (3) they then found him guilty and imposed precisely the penalties their superiors had ordered them to impose. Given the factual allegations of the complaint, which our standard of review obliges us to take as true, the impartiality of the administrative tribunal is sufficiently in question that good cause exists for the issuance of a writ of *certiorari*. See *Stratton*, 133 Ill. 2d at 428; *Condell*, 224 Ill. at 597; *City of Kankakee*, 2013 IL App (3d) 120599, ¶ 14; *Tanner*, 256 Ill. App. 3d at 1092.

¶ 86 This claim of bias should not take the Department by surprise. In his grievance, defendant stated: "[Correctional Officer] Cooper *** stated that the committee was told to give me a year across the board and find me guilty. I made verbal objections to the committee not being impartial." This was a serious allegation, which plaintiff formally made in a grievance, and one would expect the administrative record to contain a rebuttal, considering that Taylor denied the grievance. In response to a writ of *certiorari*, the Department should produce this record.

¶ 87 6. *The Eight-Day Deadline for Serving the Disciplinary Report*

¶ 88 Additionally, in his count for *certiorari*, plaintiff alleges the Department violated section 504.30(f) (20 Ill. Adm. Code 504.30(f) (2003)) in that "[t]he December 16, 2014, [inmate disciplinary report] was written beyond the statutory eight (8) days allowed after the incident." Specifically, he alleges the disciplinary report was written (and therefore served upon him) more than eight days after the final evidentiary incident listed in the disciplinary report, namely, the telephone call of December 7, 2014.

¶ 89 That is not enough, however, to establish a violation of the regulation. Plaintiff must plead facts that would, if proved, establish the Department's noncompliance with the eight-day deadline in section 504.30(f) (see *Teter v. Clemens*, 112 Ill. 2d 252, 256 (1986)), and merely by proving that the Department served the disciplinary report on him more than eight days after the final telephone call, plaintiff would not prove noncompliance with the eight-day deadline.

¶ 90 In concluding that plaintiff committed the offense of security group threat or unauthorized organization activity, the Department relied not only on the telephone calls, but also on statements by confidential informants. We do not know when the Department interviewed these confidential informants. The Department could have done so the day before serving the disciplinary report on plaintiff. Likewise, for purposes of the offense of intimidation, we do not know when the Department came into the possession of a handwriting sample by plaintiff, to compare it with the note that Harper had confiscated in the shakedown. For all we know, the Department made the comparison the day before serving the disciplinary report on plaintiff. Therefore, with respect to the alleged failure to meet the eight-day deadline in section 504.30(f), plaintiff has failed to plead a cause of action for a common-law writ of *certiorari*.

¶ 91 D. The Rationale for the Motion for Dismissal:
the Suggestion That the Illinois Administrative Code
Confers No Rights on Prisoners

¶ 92 In support of its motion for dismissal, the State cited *Ashley v. Snyder*, 316 Ill. App. 3d 1252, 1258 (2000), and two cases that relied on *Ashley*: *Duane v. Hardy*, 2012 IL App (3d) 110845, ¶ 15, and *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25.

¶ 93 In *Ashley*, a correctional center in which the plaintiff was imprisoned issued a policy-revising bulletin, which lessened the amount of personal property that inmates were

permitted to keep in their cells. Previously, an orientation manual permitted inmates to keep more personal property. *Ashley*, 316 Ill. App. 3d at 1254. The plaintiff contended that the bulletin violated various provisions of the United States and Illinois Constitutions, as well as several state and federal statutes. *Id.* at 1253.

¶ 94 One of the plaintiff's constitutional contentions was that the bulletin deprived him of property without the due process of law. *Id.* at 1255. We rejected that contention because, in *Sandin v. Conner*, 515 U.S. 472, 477-84 (1995), the Supreme Court had held that, for purposes of the due-process clause (U.S. Const., amend. XIV), states could not "create enforceable liberty interests in freedom from the routine deprivations and discomforts of prison life." *Ashley*, 316 Ill. App. 3d at 1255. Although, for the benefit of prisoners, states could " 'create liberty interests *** protected by the [d]ue [p]rocess [c]lause,' " those interests would " 'generally [be] limited to freedom from restraint which *** imposes *atypical and significant hardship* on the inmate in relation to the ordinary incidents of prison life.' " (Emphasis in original.) *Id.* at 1255-56 (quoting *Sandin*, 515 U.S. at 484). Restricting the amount of personal property inmates could keep in their cells did not qualify as an atypical and significant hardship, and, thus, for purposes of due process, such a restriction did "not impact a protected liberty interest." *Id.* at 1256.

¶ 95 We likewise rejected the plaintiff's other constitutional theories. The bulletin did not change the definition of his crime or create any risk of increasing the punishment for his crime, and hence the *ex post facto* clause (Ill. Const. 1970, art. I, § 16) was irrelevant. *Ashley*, 316 Ill. App. 3d at 1257. The bulletin was not an unreasonable seizure under the fourth amendment (U.S. Const., amend. IV), because the fourth amendment was inapplicable in prison cells. *Ashley*, 316 Ill. App. 3d at 1257. Nor did the bulletin violate the eighth amendment (U.S. Const., amend. VIII); limiting the amount of property that inmates could keep in their cells was

part of the penalty that criminal offenders typically had to pay for their offenses. *Ashley*, 316 Ill. App. 3d at 1257.

¶ 96 We also were unconvinced that statutory law lent any support to the plaintiff's claim. Rather, section 3-4-3 of the Unified Code of Corrections (730 ILCS 5/3-4-3 (West 1998)) explicitly contemplated that inmates would " 'not [be] allowed' " to keep some " 'personal property.' " *Ashley*, 316 Ill. App. 3d at 1258 (quoting 730 ILCS 5/3-4-3 (West 1998)).

¶ 97 Those holdings rightly disposed of all the constitutional and statutory claims that the plaintiff had raised in *Ashley*. Nevertheless, in an "epilogue," we added:

> "In so holding, we note that this sort of 'prisoner's rights' case depletes the resources of prosecutors, the judiciary, and [the Department], and unnecessarily diverts [the Department's] attention from ensuring that prisoners are granted their genuine rights. Prison regulations, such as those contained in the inmate orientation manual relied on here, were *never* intended to confer rights on inmates or serve as a basis for constitutional claims. *Sandin*, 515 U.S. at 482***. Instead, Illinois [Department] regulations, as well as the Unified Code, were designed to provide guidance to prison officials in the administration of prisons. In addition, Illinois law creates no more *rights* for inmates than those which are constitutionally required.
>
> ***
>
> *** Inmates thus have a constitutional right to adequate shelter, food, drinking water, clothing, sanitation, medical care, and personal safety. [Citations.] Prisoners also have a reasonable right of access to courts and a right to a reasonable opportunity to exercise religious freedom under the first amendment.

> [Citation.] Beyond these, prisoners possess no other rights, only privileges." (Emphases in original.) *Id.* at 1258-59.

¶ 98 It is true that "[p]rison regulations" *of the type represented by the inmate orientation manual* confer no rights on inmates (*id.* at 1258), but that is because bulletins, handbooks, and similar materials are not the Illinois Administrative Code (see *Lucas v. Department of Corrections*, 2012 IL App (4th) 110004, ¶ 14). A procedural operating manual is "designed to provide guidance" (*Ashley*, 316 Ill. App. 3d at 1258), but the Illinois Administrative Code is different: it is more than guidance; it has "the force and effect of law" (*People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008); *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 18). To say that "Illinois law," including the Illinois Administrative Code, "creates no more *rights* for inmates than those which are constitutionally required" would be to say that, for inmates, Illinois law is redundant and superfluous—it might as well not exist for them. (Emphasis in original.) *Ashley*, 316 Ill. App. 3d at 1258. Not only is that statement unsupported by citation to any authority, but it is irreconcilable with case law preceding *Ashley*. It had always been the law that, in prison disciplinary proceedings, the Department had to follow its own promulgated regulations (*Clayton-El v. Lane*, 203 Ill. App. 3d 895, 899 (1990); *Thompson*, 194 Ill. App. 3d at 860; *People ex rel. Yoder v. Hardy*, 116 Ill. App. 3d 489, 495 (1983)) and that inmates could sue to compel correctional officers to perform nondiscretionary duties set forth in the Department's regulations (*West*, 262 Ill. App. 3d at 557; *Shea*, 221 Ill. App. 3d at 221; *Taylor*, 93 Ill. App. 3d at 765). To the extent that *Ashley* suggests otherwise, we decline to follow *Ashley*.

¶ 99 It is true that, *for purposes of constitutional due process*, the *liberty interests* that state statutes create are "generally limited to freedom from restraint which *** imposes atypical

and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. That does not mean, however, that it is impossible for a state statute to create other, nonconstitutional rights for inmates, enforceable by *mandamus*. Several years after the issuance of *Ashley*, in an original *mandamus* action brought by a prisoner (see Ill. S. Ct. R. 381(c) (eff. Mar. 1, 2001)), the supreme court described the elements of *mandamus* as follows:

> "*Mandamus* is an extraordinary remedy to enforce, as a matter of right, the performance of official duties by a public officer where no exercise of discretion on his part is involved. *** [Citation.] To obtain relief, a plaintiff must establish a clear right to *mandamus*. [Citation.] *Mandamus* is improper where its effect is to substitute the court's judgment or discretion for that of the body which is commanded to act. *** [Citation.] Consequently, we will not grant *mandamus* relief unless the plaintiff has clearly shown: (1) an affirmative right to relief; (2) defendant's duty to act; and (3) defendant's authority to comply with the order. [Citation.]" (Internal quotation marks omitted.) *Holly v. Montes*, 231 Ill. 2d 153, 159 (2008).

Notably absent from this description of *mandamus* is any requirement that the plaintiff-prisoner's "affirmative right to relief" be constitutional. *Id.* The prisoner in *Holly* contended that, under *both* statutory law and the due-process clause (whether of the Illinois Constitution or the United States Constitution or both is unspecified), he had a clear right to mandatory supervised release that was free of the condition of electronic home monitoring. *Id.* at 156. If, as we had held in *Ashley*, "Illinois law create[d] no more *rights* for inmates than those which [were] constitutionally required" (emphasis in original) (*Ashley*, 316 Ill. App. 3d at 1258), the plaintiff's statutory argument would have been superfluous, and the supreme court could have

proceeded directly to his alternative, constitutional theory. But the supreme court painstakingly construed the relevant statutory provisions and concluded:

> "Contrary to [the plaintiff's] arguments, the [Prisoner Review Board (Board)] has the statutory authority to impose electronic home confinement as a condition of his mandatory supervised release. [The plaintiff] has no right, let alone a clear right, to demand that the Board release him from [electronic home confinement] during his [mandatory supervised release] because the imposition of that condition was a proper exercise of the Board's statutory discretion. Without a clear showing of his affirmative right to relief, [the plaintiff] has failed to establish his right to *mandamus* relief, and his complaint must fail." *Holly*, 231 Ill. 2d at 164-65.

That quoted paragraph—and indeed the five or so pages of statutory construction in *Holly*—would have been pointless if, as we said in *Ashley*, the only right a prisoner could vindicate in an action for *mandamus* was a constitutional right. The supreme court has long held that by an action for *mandamus*, a prisoner may compel the performance of a purely statutory duty. See *People ex rel. Abner v. Kinney*, 30 Ill. 2d 201, 207 (1964).

¶ 100 This is not to throw the door open to petty litigation. In an action for *mandamus*, not only must the legal duty of the public official be clear and nondiscretionary (*People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93 (2009)), but the plaintiff must have a strong equitable case (*Thomas v. Village of Westchester*, 132 Ill. App. 3d 190, 196 (1985)). Recreational litigation, even if technically meritorious, should not win a writ of *mandamus*, which is an "extraordinary remedy." *Id.* "The writ of *mandamus* is not a writ of right," and even if the plaintiff has shown a clear ministerial duty on the part of the public officer, a court

nevertheless may, in its discretion, refuse to issue the writ if the court is unconvinced the writ would accomplish "substantial justice" outweighing the disruption the writ might cause. *People ex rel. Stettauer v. Olsen*, 215 Ill. 620, 622 (1905); see also *Thomas*, 132 Ill. App. 3d at 196. Similarly, it must appear that the petitioner for a writ of *certiorari* has suffered a "substantial injury or injustice." *Stratton*, 133 Ill. 2d at 428.

¶ 101 III. CONCLUSION

¶ 102 For the foregoing reasons, we affirm the trial court's judgment in part and reverse it in part, and we remand this case for further proceedings consistent with this opinion.

¶ 103 Affirmed in part and reversed in part; cause remanded.

Chenevert

NO. 4-16-0309

IN THE

APPELLATE COURT OF THE STATE OF ILLINOIS

FOURTH JUDICIAL DISTRICT

Aaron Fillmore, Plaintiff-Appellant, v. Gladyse Taylor, et al. Defendants-Appellees	Appeal from Circuit Court of Sangamon County NO. 15-MR-915 THE HONORABLE Rudolph M. Brand, Jr., Judge Presiding

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PLAINTIFF'S PETITION FOR REHEARING

ILL. S. Ct. Rule 367

Aaron Fillmore
B-63343
10930 Lawrence Rd.
Sumner, IL 62466

Pro Se - Appellant

ARGUMENT & AUTHORITIES

On July 12, 2017 this Honorable Court reversed and remanded plaintiff's complaint seeking mandamus and Common-law (writ of certiorari relief that was dismissed by the circuit court. Fillmore v. Taylor, 2017 IL App (4th) 160309, by Opinion.

I. PLAINTIFF STATED A CAUSE OF ACTON FOR MANDAMUS BY DEFENDANTS FAILURE TO HAVE DISCIPLINARY REPORT REVIEWED AND SIGNED BY THE HEARING INVESTIGATOR, AFTER SAID REPORT WAS DETERMINED A "MAJOR" OFFENSE, A POINT OVERLOOKED OR MISAPPREHENDED BY THIS COURT

In this courts published Opinion at ¶ 37 the court held that the hearing investigator's review and signature was not required because the Departments judgment was that the inmate disciplinary report (IDR) was not a "major" report. However, this is err and contrary to the facts and submitted documents, that was overlooked or misapprehended by this court.

First, the IDR was in fact determined by the Reviewing Officer to be a "major" offense. (C-17). The Reviewing Officer clearly marked the box "major" infraction. (C-17)

As mandated by Section 504.50(d)(3), Title 20 of the Ill. Adm. Code, this was the Reviewing Officers judgment and holding. See: Durbin v. Gilmore, 718 N.E.2d 292, 295 (Ill. App. 4th Dist 1999).

Second, only "major" IDR's are submitted to the Adjustment Committee, as was this instant case. §504.50(d)(3). (C-26). Thus, the review of the IDR and signature by the Hearing Investigator (504.60(a)) is a clear ministreial act that must be obeyed. No exercise of judgment was required after the Reviewing Officer determined that the IDR was in fact "MAJOR". The mandatory provision of 504.60(a) kicked in, and the Hearing Investigators failure to review and sign the IDR was err. (C-04) This court clearly held that only "major" disciplinary reports require the hearing investigator review ¶ 37 of Opinion, but overlooked the fact that indeed the IDR was already determined "MAJOR" (C-17, 26)

Third, plaintiff was charged with violating offenses 205 and 206. (C-17). All 200 series offenses are and "shall be considered a major offense." §504.50(d)(3)(A)(2003).

WHEREFORE, Plaintiff respectfully requests a rehearing on this point overlooked or misapprehended by this Court, and hold that plaintiff stated a claim for mandamus in this respect.

Date: July 19, 2017

Respectfully Submitted,

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PROOF OF SERVICE

I, Aaron Fillmore, pursuant to 735 ILCS 5/1-109, hereby certify that I served upon.

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a true copy of. Plaintiff's Petition for Rehearing by placing same in Lawrence C.C. institutional mail for mailing via U.S. Postage with attached voucher, to cover first-class postage costs on July 19, 2017.

Aaron Fillmore

CERTIFICATE OF COMPLIANCE

I, Aaron Fillmore, certify that this Petition for Rehearing complies with Ill. S. Ct. R. 341(c).

Aaron Fillmore

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
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SPRINGFIELD, IL 62794-9206

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
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July 26, 2017

RE: Fillmore, Aaron P. v. Taylor, Gladyse C. et al.
General No.: 4-16-0309
Sangamon County
Case No.: 15MR915

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Carla Bender
Clerk of the Appellate Court

c: Aaron P. Fillmore
Kaitlyn Noel Chenevert

Chenevert, Kaitlyn

From: no-reply@tylerhost.net
Sent: Wednesday, August 02, 2017 4:43 PM
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Envelope Number: 65094
Case Number: 4-16-0309
Case Style: Fillmore, Aaron P. v. Taylor, Gladyse C. et al.

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Filing Description	Petition for Rehearing of Defendants-Appellees
Type of Filing	EFile
Filed By	Kaitlyn Chenevert
Filing Attorney	Kaitlyn Chenevert

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No. 4-16-0309

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

AARON P. FILLMORE, B63343,	)	Appeal from the Circuit Court for
	)	the Seventh Judicial Circuit,
Plaintiff-Appellant,	)	Sangamon County, Illinois
	)	
v.	)	
	)	No. 15 MR 915
GLADYSE TAYLOR, LIEF McCARTHY, and ELDON COOPER,	)	
	)	The Honorable
	)	RUDOLPH M. BRAUD,
Defendants-Appellees.	)	Judge Presiding.

PETITION FOR REHEARING OF DEFENDANTS-APPELLEES

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POINTS AND AUTHORITIES

POINTS OVERLOOKED OR MISAPPREHENDED

This Court issued an opinion on July 12, 2017, in this case in which it affirmed in part and reversed in part the circuit court's judgment granting Defendants' motion to dismiss. *See Fillmore v. Taylor*, 2017 IL App (4th) 160309, ¶¶ 102-03. At the end of the opinion, the court discussed its holding in *Ashley v. Snyder*, 316 Ill. App. 3d 1252 (4th Dist. 2000), and declined to follow the portion of *Ashley* which held that prison regulations conferred no judicially enforceable rights on inmates. *Fillmore*, 2017 IL App (4th) 160309, ¶ 98. Defendants-Appellees ask that this Court reconsider and vacate the portion of its decision that declines to follow *Ashley* and holds that inmates may sue to compel employees of the Illinois Department of Corrections ("Department") to perform nondiscretionary duties included in prison regulations. This Court should reconsider the merits and affirm the circuit court's judgment. Alternatively, the court at least should vacate that holding and may do so without altering the judgment.

In this case, the court began its analysis of *Ashley* by noting that "[i]t had always been the law that, in prison disciplinary proceedings, the Department had to follow its own promulgated regulations . . . ." *Fillmore*, 2017 IL App (4th) 160309, ¶ 98. Although an administrative agency may be bound to follow its own regulations, it does not necessarily follow that inmates have a private right of action to enforce prison regulations. *See Pryor v. United Equitable Ins. Co.*, 2011 IL App (1st) 110544, ¶ 8 ("a private right of

action is not necessarily available based on a violation of the Administrative Code rules"); *Weis v. State Farm Mut. Auto. Ins. Co*., 333 Ill. App. 3d 402, 406 (2d Dist. 2002) (violation of insurance regulations in Illinois Administrative Code does not give rise to private right of action). By seemingly holding otherwise, this Court has departed from well-established precedent and will needlessly subject the judicial system to a flood of litigation.

I. *Ashley* is well established and well-reasoned law, and should not be disturbed based on *stare decisis*.

The United States Supreme Court addressed prisoners' ability to challenge violation of statutes and regulations that govern prison operations in *Sandin v. Conner,* 515 U.S. 472 (1995). In particular, *Sandin* addressed the issue of whether a State's administrative regulation created a liberty interest for inmates. *Id*. at 477. *Sandin* began its analysis with *Wolff v. McDonnell*, 418 U.S. 539 (1974), which held that the "Due Process Clause itself does not create a liberty interest in credit for good time behavior, but that the statutory provisions" that provided for good time credits "created a liberty interest in a shortened prison sentences," and accordingly were only revocable if the inmate was "guilty of serious misconduct" and had been afforded "minimum procedures necessary to reach a mutual accommodation between institutional needs and objectives and provisions of the Constitution." *Sandin,* 515 U.S. at 477-78. *Sandin* noted that cases that followed *Wolff,* however, focused "on whether state action was mandatory or discretionary . . . ." *id*. at 479. And this shift from "the focus of the liberty interest inquiry" to one "based on the

language of a particular regulation, and not the nature of the deprivation . . . encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges." 515 U.S. at 481.

This approach caused courts to "[draw] negative inferences from mandatory language in the text of prison regulations . . . ." *id*. *Sandin* noted that while that "conclusion may be entirely sensible in the ordinary task of construing a statute defining rights and remedies available to the general public," it was "a good deal less sensible in the case of a prison regulation primarily designed to guide correctional officials in the administration of a prison." *Id*. at 481-82.

In addition, *Sandin* explained that "allowing inmates to claim liberty rights stemming from prison regulations "creates disincentives for States to codify prison management procedures in the interest of uniform treatment." *Id*. at 482. Specifically, prison administrators are "concerned with the safety of the staff and inmate population," and to ensure their safety, prison administrators create guidelines that "are not set forth solely to benefit the prisoner. They also aspire to instruct subordinate employees how to exercise discretion vested by the State in the warden, and to confine the authority of prison personnel in order to avoid widely different treatment of similar incidents." *Id*. Furthermore, to allow inmates to create liberty interests out of prison regulations could lead States to "avoid [the] creation of liberty interests

by having scarcely any regulations, or by conferring standardless discretion on correctional personnel." *Id*.

Five years later, this Court followed *Sandin* when deciding *Ashley*. The plaintiff in *Ashley* claimed that language in an inmate orientation manual "created a liberty interest in an inmate's right to keep certain enumerated items of personal property in his cell, which could not be taken away without due process of law." 316 Ill. App. 3d at 1255. This Court rejected the inmate's argument, stating that the "fundamental problem" with his argument was that "in *Sandin v. Conner*, the United States Supreme Court expressly rejected that methodology in the context of prison liberty interests." *Id.* (internal citations omitted).

Ashley explained that, pursuant to *Sandin*, "states cannot create enforceable liberty interests in freedom from the routine deprivations and discomforts of prison life." *Id*. And "[w]hile states may under certain circumstances create liberty interests which are protected by the [d]ue [p]rocess [c]lause, these interests will be generally limited to freedom from restraint which imposes *atypical and significant hardship* on the inmate in relation to the ordinary incidents of prison life." *Id*. at 1255-56 (emphasis in original) (citing *Sandin*, 515 U.S. at 484).

Ashley concluded that "prison regulations, such as those contained in the inmate orientation manual relied on here, were never intended to confer rights on inmates or serve as a basis for constitutional claims." *Ashley*, 316 Ill.

App. 3d at 1258. Thus, as of 2000, the law has been that inmates cannot sue Department employees to enforce prison regulations. *Ashley* has since been extended to prison rules beyond those found in orientation manuals. In *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 17, and *Knox v. Godinez*, 2012 IL App (4th) 110325, ¶ 22, this Court held that the United Code of Corrections does not create judicially enforceable rights for inmates. And in *Edens v. Godinez*, 2013 IL App (4th) 120297, ¶¶ 23-24, this Court held that Department directives do not create rights for inmates. In *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 25, this Court further extended *Ashley* to hold regulations contained in the Illinois Administrative Code did not confer rights on inmates.

The holdings in *Ashley* and *Dupree*, therefore, are settled, and should not be disturbed based on *stare decisis*. The doctrine of *stare decisis* "is the means by which courts ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 439-40 (2008). It "reflects the policy of the courts to stand by precedents and not to disturb settled points." *Wakulich v. Mraz*, 203 Ill. 2d 223, 230 (2003). Thus, "a question once deliberately examined and decided should be considered as settled and closed to further argument." *Id*. And "[a] settled rule of law that does not contravene a statute or constitutional principle should, therefore, be followed unless serious detriment prejudicial to public interests is likely to result." *Tuite v. Corbitt*, 224 Ill. 2d 490, 506 (2006).

When "a court of review reexamines an issue already ruled upon and arrives at an inapposite decision, the straight path of *stare decisis* is affected, as well as the reliance interests of litigants, the bench, and the bar." *O'Casek*, 229 Ill. 2d at 440. Any departure from *stare decisis* "demands special justification," *Chi. Bar Ass'n v. Ill. State Bd. of Elections*, 161 Ill. 2d 502, 510 (1994), and courts should depart from prior precedent only upon a showing of good cause, *Wakulich*, 203 Ill. 2d at 230. Good cause exists "when governing decisions are unworkable or are badly reasoned." *Tuite*, 224 Ill. 2d at 506. Indeed, the standard is not whether the court "might have decided otherwise if the question were a new one." *Id.* at 505.

Good cause does not exist to depart from this court's holdings in *Ashley* and *Dupree*. First, courts have followed *Ashley* many times. *See, e.g.*, *Montes v. Taylor*, 2013 IL App (4th) 120082, ¶ 20; *Knox*, 2012 IL App (4th) 110325, ¶ 22; *Jackson*, 2011 IL App (4th) 100790, ¶ 17; *Bobock v. O'Leary,* 2015 IL App (3d) 150096, ¶¶ 14-15; *Ruhl v. Dep't of Corr.*, 2015 IL App (3d) 130728, ¶¶ 23-25; *McNeil v. Carter*, 318 Ill. App. 3d 939, 943 (2001); *Lindwall v. State of Ill., Dep't of Corrs.*, 63 Ill. Ct. Cl. 249, 250-51 (June 10, 2011). Thus, *Ashley* is well-established in Illinois law.

This Court held in this case that"[i]t had always been the law that . . . inmates could sue to compel correctional officers to perform nondiscretionary duties set forth in Department regulations." *Fillmore*, 2017 IL App (4th) 160309, ¶ 98. To support this, this Court cited *West v. Gramley*, 262 Ill. App.

3d 552 (4th Dist. 1994), *Taylor v. Franzen*, 93 Ill. App. 3d 758 (5th Dist. 1981), and *Shea v. Edwards*, 221 Ill. App. 3d 219 (3d Dist. 1991). But these cases pre-date *Sandin v. Conner,* 515 U.S. 472 (1995), and do not take into account modern jurisprudence of prisoner litigation.

In addition, *Ashley* rested on public policy reasons for prohibiting inmates from suing to enforce prison regulations and those public policy concerns remain as relevant today. *Ashley* noted that "this sort of 'prisoner's rights case depletes the resources of prosecutors, the judiciary, and DOC, and unnecessarily diverts DOC's attention from ensuring that prisoners are granted their genuine rights." 316 Ill. App. 3d at 1258. This problem has not gone away. *See Mason v. Snyder*, 332 Ill. App. 3d 834, 842 (4th Dist. 2002) (circuit courts have authority to *sua sponte* strike frivolous mandamus petitions and to "utilize their discretion in dealing with professional litigants who inappropriately burden the court system with nonmeritorious litigation, stemming from their unhappiness as DOC inmates").

This Court in this case, however, stated that its holding would not "throw the door open to petty litigation" because even if a plaintiff has a clear affirmative right to relief, a court may nonetheless decline to issue a writ of *mandamus* "if the court is unconvinced the writ would accomplish substantial justice outweighing the disruption the writ might cause." *Fillmore*, 2017 IL App (4th) 160309, ¶ 100. And "it must appear that the petitioner for a writ of *certiorari* has suffered a substantial injury or injustice." *Id*. But the court

offered no guidance about how this holding would limit inmates from filing complaints alleging violations of prison regulations, nor what it meant by substantial justice or injustice. Thus, good cause does not exist to depart from the *Ashley* and *Dupree* holdings where it would be difficult to apply the standard set forth in this case. *See Iseberg v. Gross*, 227 Ill. 2d 78, 99 (2007) (declining to abandon the "no affirmative duty" rule in tort cases because it would "create a number of practical difficulties – defining the parameters of an affirmative obligation and enforcement, to name just two").

In addition, good cause does not exist to depart from *Ashley* and *Dupree* because it creates disincentives for the Department to implement regulations. As explained in *Sandin,* 515 U.S. at 482 (1995), allowing inmates to claim liberty rights stemming from prison regulations "creates disincentives for States to codify prison management procedures in the interest of uniform treatment." And to allow inmates to create liberty interests out of prison regulations could lead to states to "avoid [the] creation of liberty interests by having scarcely any regulations, or by conferring standardless discretion on correctional personnel." *Id*. Similarly here, a holding that inmates may sue Department employees to enforce alleged violations of prison regulations creates disincentives for the Department to codify those rules. In sum, *Ashley* is settled law in Illinois, and good cause does not exist to depart from its holding.

Thus, Ashley created a well-reasoned rule for when prisoners may sue to enforce provisions of state statutes, administrative regulations, and directives that govern the operations of prisons. This prison-context specific rule rests on Supreme Court of the United States principles and sound public policy. The Court's re-calibrating of that rule in this case is both un-justified and un-workable.

II. This Court misapprehended the cases following *Ashley*.

This Court distinguished *Ashley* because it involved a prison orientation manual, whereas the prisoner in this case alleged that Department employees violated regulations contained in the Illinois Administrative Code. *See Fillmore*, 2017 IL App (4th) 160309, ¶ 98. But *Ashley* was extended in *Dupree*, 2011 IL App (4th) 100351, ¶ 25, to hold regulations contained in the Illinois Administrative Code did not confer rights on inmates.

In *Dupree*, an inmate alleged that a regulation gave him a right to at least five hours of exercise yard time per week. *Id*. at ¶ 24. He sued Department employees, seeking to enforce that portion of the Code. *Id*. This Court rejected his argument, and held "[i]n *Ashley v. Snyder* . . . this court held that prison regulations, such as the Administrative Code, were designed to provide guidance to prison officials in the administration of prisons and were never intended to confer rights on inmates or serve as a basis for constitutional claims." *Id*. at 25. Thus, this Court has held that inmates cannot sue Department employees to perform nondiscretionary duties arising

from prison regulations contained in the Code. And the prisoner here alleged in his complaint that Defendants did not comply with various Code provisions. C5-10. But, based on *Ashley*, and as extended in *Dupree*, those regulations were never intended to confer rights on him, and so he could not sue to enforce them.

In addition, this Court in this case misapprehended the Illinois Supreme Court's holding in *Holly v. Montes*, 231 Ill. 2d 153 (2008). *Holly* discussed the three requirements for *mandamus*, which includes an "affirmative right to relief." *Id.* at 159. This Court observed that "[n]otably absent from this description of *mandamus* is any requirement that the plaintiff-prisoner's affirmative right to relief be constitutional." *Fillmore*, 2017 IL App (4th) 160309, ¶ 99. This Court explained that the plaintiff in *Holly* alleged a clear right to mandatory supervised release without the condition of electronic home monitoring, and that the right was established under both statutory law and the due process clause. *Id*. Thus, this Court concluded, *mandamus* does not require a constitutional right to relief because the Court in *Holly* spent "five or six pages of statutory construction," and such analysis "would have been pointless, if, as we said in *Ashley*, the only right a prisoner could vindicate in an action for *mandamus* was a constitutional right." *Id*.

This Court's analysis of *Holly* was wrong for two reasons. First, while *mandamus* generally may not require a constitutional affirmative right, prisons are different settings. *See Bell v. Wolfish,* 441 U.S. 520, 547 (1979)

("problems that arise in the day-to-day operations of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security"). *See also Sandin* 515 U.S. at 481-82 (drawing negative inferences from mandatory language may be sensible "in the ordinary task of construing a statute defining rights and remedies available to the general public," it was "a good deal less sensible in the case of a prison regulation primarily designed to guide correctional officials in the administration of a prison"). Thus, although a regulation may be enforceable by a citizen generally, it does not necessarily follow that a prison regulation most also be enforceable by an inmate.

Second, the facts of *Holly* are different than those in *Fillmore*. The plaintiff in *Holly* argued that the Prisoner Review Board lacked the statutory authority to impose the condition of electronic home confinement as part of his mandatory supervised released. *Holly*, 231 Ill. 2d at 156. As *Fillmore* pointed out, 2017 IL App (4th) 160309, ¶ 99, *Holly* engaged in several pages of analysis of statutory construction. But that analysis was done to answer the question of whether the Board exceeded its statutory authority in imposing certain restrictions on the plaintiff, not the question of whether the Board failed to comply with its own rules when imposing those restrictions. And the question of whether an agency has the authority to act at all is different than the

question of whether an individual may sue to require an agency to enforce its own rules.

III. Following *Ashley* and *Dupree*, this Court should reconsider the merits and affirm the circuit court's judgment.

As explained *supra*, pp. 2-8, this Court should follow *Ashley* and *Dupree*, and in doing so, hold that Fillmore lacks standing to sue to enforce rights he claims are created by statutes, rules or regulations that govern prison operations. To the extent he does have standing to bring a claim, it is to ensure that the minimum due process requirements set forth in Wolff are satisfied. *Wolff* held that inmates are entitled to certain due process protections during prison disciplinary proceedings, specifically (1) notice of the disciplinary charges at least 24 hours prior to the hearing; (2) an opportunity to call witnesses and present documentary evidence in his defense when consistent with institutional safety and correctional goals,; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. 418 U.S. at 563-66. According to Fillmore's own allegations, he received each of these protections.

Fillmore received more than 24 hours' notice prior to the hearing. He was served with the disciplinary report on December 16, 2014, C17, and the Adjustment Committee hearing took place three days later on December 19, 2014, C26. In addition, the Adjustment Committee provided a written statement describing the evidence relied on, and the reasons for the disciplinary action. C26-27. Thus, these two requirements were met.

Fillmore also received the required protections with regard to his requests for witnesses and documentary evidence. Defendants' decision not to call the witnesses Fillmore requested did not violate his due process rights. A witness request may be denied if, among other things, the testimony would be irrelevant or cumulative, or would jeopardize the safety or disrupt the security of the facility. 20 Ill. Admin. Code § 504.80(h)(4). In addition, under *Wolff*, inmates must be provided with an opportunity to call witnesses "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566.

Fillmore requested that eight witnesses be called and claimed that each of the witnesses would testify that "[he] did not order or direct any security threat group activity within IDOC ever." C22. Fillmore did not comply with 20 Ill. Admin. Code § 504.80(f)(2), which required an explanation of the witnesses' testimony, but even so, nine witnesses all providing testimony regarding the same topic would have been unnecessarily cumulative, and thus refusal of the Adjustment Committee to call all nine witnesses did not violate due process.

In addition, one of the witnesses requested was an inmate at a different Department facility. C22. Transporting an inmate from one correctional facility to another clearly would be a burden on the Department, particularly where Fillmore could have obtained an affidavit or other statement from that inmate instead. Nor was there a due process violation in denying Fillmore's

request for the eight witnesses who were inmates at Lawrence. There are obvious security concerns implicated in a request for the Department to coordinate testimony from eight different inmates. And five of the witnesses were known members of the Latin Kings. C18-22.

Nor were Fillmore's due process rights violated by the Department's decision to deny his requests to review telephone logs, telephone recordings, or notes obtained during the cell searches. Fillmore argued that the telephone logs would show that he did not use the telephone on the days specified in the disciplinary report. C22. But it was the content of his conversations with Adam, not the dates of those conversations, that the Department used to establish that Fillmore was an active member of the Latin Kings. And Fillmore has never denied the content of the calls described in the report. Thus, even if the telephone logs showed that Fillmore had not used the phone on the dates specified in the report, that would be not be a defense to the charges against him. There was, therefore, no due process violation in denying his request for those documents.

Fillmore also argued below that the telephone recordings, when played in their entirety, would not substantiate the charges against him. C23. But Fillmore was not precluded from describing the context of the conversations to McCarthy and Cooper during the Adjustment Committee hearing. Thus, the denial of his request to listen to the telephone recordings, where he was a party to those conversations, did not impede his ability to defend himself.

In addition, McCarthy and Cooper's decision not to allow Fillmore to review the notes obtained during the cell searches did not violate due process. McCarthy and Cooper acted within their discretion to deny his request to view the notes because they contained information regarding the Latin Kings, including names of individuals and inmates associated with the gang. Disclosing any additional information about the gang or these individuals could compromise the safety and security of the prison. In sum, Fillmore received due process protections required during his Adjustment Committee hearing.

IV. Alternatively, this Court should vacate its holding and reaffirm *Ashley*, but conclude that Fillmore was not afforded all process he was due under *Wolff*.

In any event, this court could still reverse the circuit court's judgment in part without departing from *Ashley*. Rather than finding that Fillmore was entitled to relief based on alleged violations of Department regulations, this court could hold that the Adjustment Committee hearing did not comply with the requirements set forth in *Wolff*.

This court held that pursuant to 20 Ill. Admin. Code § 504.80(f)(1), Fillmore should have been given the notes that the Department claimed he wrote and that formed part of the basis for his disciplinary charge. *Fillmore*, 2017 IL App (4th) 160309, ¶¶ 80-81. But this Court could hold instead that, under *Wolff*, Fillmore was entitled to copies of the notes or an explanation that the notes could not be shared because of institutional safety concerns.

In addition, this Court reversed the circuit court's judgment with respect to Fillmore's allegations that the Committee's written summary did not include a summary of his written statement. *Fillmore*, 2017 IL App (4th) 160309, ¶¶ 66-67. *Wolff* requires a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. 418 U.S. at 563. While Defendants believe the Committee summary was adequate, this Court could have held instead that under *Wolff*, Defendants should have included in their written statement all of the evidence reviewed, including Fillmore's written statement.

Last, this Court also held that Fillmore was entitled to relief because Defendants violated 20 Ill. Admin. Code § 504.80(d) by failing to note his objection to their lack of impartiality, *Fillmore*, 2017 IL App (4th) 160309, ¶¶ 62-63, and that Defendants should have recused themselves based on Fillmore's allegations that Defendants said they were told by "higher-up prison authorities" to find him guilty, *id*. at ¶¶ 84-86. This Court believes there was no due process violation because the Committee members are entitled to a presumption of honesty and integrity, *see Williams v. Dep't of Emp't Sec.*, 2016 IL App (1st) 142376, ¶ 48, and even accepting Fillmore's allegations as true, he did not allege that Cooper and McCarthy were unable to objectively review the evidence included in the disciplinary report, or that Cooper and McCarthy found him guilty only because they were told to do so. But if this Court disagrees with Defendants, rather than relying on the

Department's regulations, this Court could have reversed the circuit court by holding that Fillmore's rights under *Wolff* were implicated by the Defendants' alleged lack of impartiality.

CONCLUSION

This Court should grant rehearing, vacate parts of its July 12, 2017 opinion, and modify the opinion in order to fully address the points overlooked or misapprehended.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 367(a). The length of this petition, excluding the cover, points and authorities, certificate of compliance, and appendix, is 18 pages.

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on August 2, 2017, I electronically filed the foregoing Petition for Rehearing of Defendants-Appellees with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and thus was served by placing a copy in an envelope bearing proper prepaid postage and directed to the address indicated below, and depositing the envelope in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, before 5:00 p.m. on August 2, 2017.

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Case Number: 4-16-0309
Case Style: Fillmore, Aaron P. v. Taylor, Gladyse C. et al.

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Filed By	Kaitlyn Chenevert
Filing Attorney	Kaitlyn Chenevert

VERIFICATION BY CERTIFICATION

I, Kaitlyn N. Chenevert, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois, 60601. I have personal knowledge of the facts set forth in this verification by certification. If called upon to do so, I could and would competently testify thereto.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Illinois Attorney General's Office and I represent Defendants-Appellants Gladyse Taylor, Lief McCarthy, and Eldon Cooper in this appeal, No. 122626.

3. On August 2, 2017, I electronically submitted the Defendants-Appellants' petition for rehearing with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District, by using the Odyssey eFileIL system.

4. A true and accurate copy of the petition for rehearing that I electronically submitted, without the appellate court's July 12, 2017 opinion which was attached as an appendix to Defendants-Appellants' petition, is included in the Defendants-Appellants' Appendix at A 39 – A 63.

5. A true and correct copy of the e-mail that I received from the the Odyssey eFileIL system on August 2, 2017, confirming that Defendants-Appellants' petition for rehearing had been submitted for filing is included in the Defendants-Appellants' Appendix at A 37 – A 38.

6. On August 8, 2017, I received notice that the electronic submission of Defendants-Appellants' petition for rehearing was rejected for filing. A true and

correct copy of the August 8, 2017 e-mail is included in the Defendants-Appellants' Appendix at A 64.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

Executed on June 6, 2018

/s/ Kaitlyn N. Chenevert
KAITLYN N. CHENEVERT
Assistant Attorney General
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Common Law Record
Circuit Court No. 2015 MR 915
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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on June 7, 2018, I electronically filed the foregoing Brief and Appendix of Defendants-Appellants with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that a participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Chad Clamage
CClamage@mayerbrown.com

I further certify that another participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and thus was served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by that participant on June 7, 2018.

Marc Kadish
MKadish@mayerbrown.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true

and correct to the best of my knowledge, information, and belief.

/s/ Kaitlyn N. Chenevert
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