

STATE OF MICHIGAN
IN THE SUPREME COURT

KENNETH MCKENZIE,
Plaintiff-Appellee,

Supreme Court No. 161690

v

Court of Appeals No. 347061

DEPARTMENT OF CORRECTIONS,
STATE OF MICHIGAN, and
MACOMB CORRECTIONAL
FACILITY WARDEN,

Wayne County Circuit Court
No. 18-002451-CD

Defendants-Appellants,

and

RANDALL HAAS,
Defendant.

FATIMA OLDEN,
Plaintiff-Appellee,

Supreme Court No. 161691

v

Court of Appeals No. 347798

DEPARTMENT OF CORRECTIONS,
STATE OF MICHIGAN, and MACOMB
CORRECTIONAL FACILITY WARDEN,

Wayne County Circuit Court
No. 18-001424-CD

Defendants-Appellants.

**DEFENDANTS-APPELLANTS' APPENDIX
TABLE OF CONTENTS**

McKenzie v Michigan Department of Corrections, et al.

Description	Page Number(s)
Disability Accommodation Request	Page 001-002
Response to Disability Accommodation Request	Page 003-005
Approval Emails	Page 006-008
ADA Response	Page 009-011
Position Description	Page 012-026
Response to Disability Accommodation Request	Page 027
Accommodation Request Appeal	Page 028
Appeal Response	Page 029-030
EEOC Complaint	Page 031

Description	Page Number(s)
Doctors' Notes	Page 032-036
Plaintiff's First Amended Complaint	Page 037-056
Order Denying Defendant's Motion for Summary Disposition	Page 057-058
Order Granting Motion for Immediate Consideration and Denying Motion to Dismiss	Page 059
Opinion from the Michigan Court of Appeals	Page 060-070
Wayne County Circuit Court Register of Actions	Page 071-073
Michigan Court of Appeals Register of Actions	Page 074-080

Olden v Michigan Department of Corrections, et al.

Description	Page Number(s)
Leader Dog Approval Emails	Page 081-083
Disability Accommodation Request	Page 084-085
ADA Response	Page 086-087
Position Description	Page 088-102
Rejection of Accommodation	Page 103-104
Accommodation Request Appeal	Page 105
Doctors' Notes	Page 106-109
Plaintiff's First Amended Complaint	Page 110-127
Order Denying Defendant's Motion for Summary Disposition	Page 128-129
Defendants' Brief in Support of Motion for Summary Disposition	Page 130-154
Plaintiff's Response to Defendants' Motion	Page 155-178
Defendants' Reply to Plaintiff's Response	Page 179-185
Order Granting Motion for Immediate Consideration, Application for Leave to Appeal and Motion to Consolidate	Page 186-187
Wayne County Circuit Court Register of Actions	Page 188-191
Michigan Court of Appeals Register of Actions	Page 192-200

DISABILITY ACCOMMODATION REQUEST AND MEDICAL STATEMENT

SECTION I – FOR COMPLETION BY EMPLOYEE. Please fully answer each item on the front of this form, in accordance with the attached instructions. Then provide the form, together with a copy of your position description, to your medical professional to complete the back of the form. Return the completed form to your departmental Accommodation Coordinator or other designated official. The information you submit will be treated as confidential to the extent permitted by law. Please note that **your request cannot be processed unless both sides of this form are completed.** For further information, refer to Civil Service Regulation 1.04, "Reasonable Accommodation."

1. Name <i>Kenneth C. McKenzie</i>	2. Employee's Identification Number [REDACTED]	3. Department/Agency <i>Michigan Department of Corrections</i>
4. Working Title <i>COR E-9 / Correction officer</i>	5. Civil Service Classification <i>E-9</i>	6. Bargaining Unit (if any) <i>SEIU LOCAL 526 M</i>
7. Work Address (home address if on leave) <i>34625 26 Mile Rd, New Haven, MICH 48048.</i>	8. Telephone Numbers Work <i>(586) 749-4900</i> Home [REDACTED]	

9. Describe your current job duties requiring an accommodation because of a disability. (To facilitate the timely consideration of your request, please attach a copy of your position description when submitting this form. If you do not have a copy of your position description, please contact your human resources office or accommodation coordinator for one.) *Allergic to Dogs I Begin to sneeze more often watery itchy eyes and skin.*

10. My disability is (Check as appropriate.) Mental Physical Both

11. Describe the functional limitations caused by your disability for which you are requesting an accommodation. Use additional pages, if necessary. (Attach any additional medical documentation.) *AS STATED IN QUESTION #9.*

12. Describe any accommodations that you believe would minimize or eliminate the functional limitations listed above. Include any available information relating to cost, source, name of device, etc. *Requesting to be placed in units that would not have the dog program period. Respectfully request not to be pattern the yard at no given time that may compromise the risk of me responding to an duress were dogs are housed in units*

13. Date Submitted <i>8-12-2015</i>	14. Name and phone number of Immediate Supervisor <i>[REDACTED]</i>	15. Employee's Signature <i>C/S Kenneth McKenzie</i>
--	--	---

SECTION II - FOR COMPLETION BY MEDICAL PROVIDER. Please fully answer all applicable parts, based on your medical knowledge, experience, and examination of the patient. The employee should provide you with a copy of their position description. The following sections of the position description should be referenced when completing this form: job duties, physical effort, and essential functions. Please attach additional sheets if more space is needed. When completed, please sign and return the form to the patient so that he or she may submit it to their employer.

16. Health Care Provider's Name and Business Address Dr. Paulina Singh 6405 Telegraph Ave Bloomfield Hills MI 48301	17. Telephone Number # 248-792-3690
--	--

18. Does this employee have a physical or mental impairment? Yes No. (If yes, state the type of impairment.)
Chronic Allergies

19. List each major life activity limited by the impairment and describe how the employee is restricted due to the condition, as compared to an average person.
Patient is unable to be exposed to dog dander
Patient gets an allergic reaction. itchy sneezing and rash +/- Shortness of breath

20. What is the duration or expected duration of the employee's impairment?
Lifetime

21. Can the employee perform all job duties listed in the job description? Yes No. (If no, state which job functions cannot be performed and why.)
Cannot be exposed to dogs

22. Describe any reasonable accommodations that would allow the employee to perform the job functions listed above. If medical leave is one of the possible accommodations, please provide an estimated duration for the leave.
Avoidance of dogs with patient's job duties

23. Would performing any job function listed in the job description result in a direct safety or health threat to the employee or other people (coworkers, the general public, etc.)? Yes No. (If yes, state which job functions would pose a threat, what that threat could be, and any reasonable accommodation that would eliminate or reduce the threat to an acceptable level.)
Exposure to dogs

24. Medical Provider's Signature 	25. Date 8/7/15
---	--------------------

RESPONSE TO DISABILITY ACCOMMODATION REQUEST

This form must be completed after an employee has filed a Disability Accommodation Request Form. The departmental Accommodation Coordinator (or other designated official) must complete Part A and send a copy to the requesting employee. (Civil Service Regulation 1.04 requires the Accommodation Coordinator to issue a written response within **eight weeks** after receiving a completed Disability Accommodation Request Form from an employee.)

PART A: ACCOMMODATION COORDINATOR'S RESPONSE TO REQUEST FOR ACCOMMODATION	
1. Accommodation Coordinator's Name Elaine D. Davis	2. Coordinator's Title Human Resources Officer
3. Department/Agency Mdoc/Macomb Correctional Facility (47/41)	4. Date Request Received September 23, 2015
5. Employee's Name Kenneth McKenzie	6. Employee's Identification Number [REDACTED]
<p>7. Final Disposition of Request (Check one box and then describe or explain in detail.)</p> <p><input type="checkbox"/> Employee's Request APPROVED (Describe the disability and the final, approved accommodation[s].)</p> <p><input type="checkbox"/> Employee's Request DENIED (Explain the reason[s] for denying the requested accommodation[s].)</p> <p>Based on the receipt of medical indicating that CO McKenzie can return to work without restrictions, the request for accommodations is no longer necessary. If this information is not accurate, please provide additional information to the Human Resources Office.</p>	
Accommodation Coordinator's Signature <i>Elaine D. Davis</i>	Date September 24, 2015
PART B: EMPLOYEE'S ACKNOWLEDGMENT (When completed, return to Accommodation Coordinator.)	
<p>I acknowledge receipt of this answer and I <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE (If you disagree, please explain and attach any necessary documentation.)</p>	
Employee's Signature	Date

RESPONSE TO DISABILITY ACCOMMODATION REQUEST INSTRUCTIONS FOR COMPLETING THE FORM

PART A: To be completed by the departmental Accommodation Coordinator or designee.

<u>Questions</u>	<u>Instructions</u>
Questions 1-6	Self-explanatory.
Question 7	<p>Describe your final decision on the employee's written request for an accommodation:</p> <p>A. If you APPROVE an accommodation, check the box for "Employee's Request APPROVED" and describe in detail the following:</p> <ol style="list-style-type: none"> (1) The employee's disability. (2) The accommodation approved. (3) How the approved accommodation addresses the functional limitations and essential job functions. <p>B. If you DENY the employee's request for an accommodation, check the box for "Employee's Request DENIED" and describe in detail your reason(s) for denying the request.</p>

After completing Part A, the Accommodation Coordinator or designee sends a copy of the completed form to the employee.

PART B: To be completed by the employee.

Instructions

The employee should review Part A and indicate agreement or disagreement with the final decision. If the employee disagrees with the final decision, the employee may provide an explanation and any necessary documentation to substantiate disagreement.

Upon completion of Part B, the employee keeps a copy and returns the signed copy of the Response to Disability Accommodation Request (and attached documentation, if applicable) to the departmental Accommodation Coordinator or designee.

NOTICE TO EMPLOYEE: Appeal of accommodation decision.

If an employee is dissatisfied with the final response of the Accommodation Coordinator or the Accommodation Coordinator fails to issue a final response within eight weeks, the employee may appeal through the appropriate grievance procedure or take other action authorized by law.

RECEIVED by MSC 12/20/2021 4:03:47 PM

Word Online

Print Find Download Help

CS-1968
REV 02/07

Michigan Civil Service Commission
400 South State Street, P.O. Box 30007
Lansing, Michigan 48206

Authority: Public Act 115, MCL 207.1
Consistent with 1961, Civil Service
Commission Act 14, and Civil
Service Regulations 1.81

RESPONSE TO DISABILITY ACCOMMODATION REQUEST

This form must be completed after an employee has filed a Disability Accommodation Request Form. The departmental Accommodation Coordinator (or other designated official) must complete Part A and send a copy to the requesting employee. (Civil Service Regulation 1.04 requires the Accommodation Coordinator to issue a written response within eight weeks after receiving a completed Disability Accommodation Request Form from an employee.)

PART A: ACCOMMODATION COORDINATOR'S RESPONSE TO REQUEST FOR ACCOMMODATION	
1. Accommodation Coordinator's Name Evelyn D. Davis	2. Coordinator's Title Human Resources Officer
3. Department/Agency Mfoc/Access Operational Facility (47/41)	4. Date Request Received September 23, 2015
5. Employee's Name Kenneth M. King	6. Employee's Identification Number [REDACTED]
7. Final Disposition of Request (Check one box and then describe or explain in detail.) <input type="checkbox"/> Employee's Request APPROVED (Describe the detail(s) and the final approved accommodation(s).) <input type="checkbox"/> Employee's Request DENIED (Explain the reason(s) for denying the requested accommodation(s).) <small>Based on the receipt of medical indicating that CDMS's rule can return to work without restriction, the request for accommodations is no longer necessary. If this information is not accurate, please provide additional information to the Human Resources Office.</small>	
Accommodation Coordinator's Signature <i>Evelyn D. Davis</i>	Date September 24, 2015
PART B: EMPLOYEE'S ACKNOWLEDGMENT (When completed, return to Accommodation Coordinator.)	
I acknowledge receipt of this answer and I <input checked="" type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE (If you disagree, please explain and attach any necessary documentation.)	
Employee's Signature <i>Kenneth C. M. King</i>	Date 9-25-15

RESPONSE TO DISABILITY ACCOMMODATION REQUEST INSTRUCTIONS FOR COMPLETING THE FORM

PART A: To be completed by the departmental Accommodation Coordinator or designee.	
Questions	Instructions
Questions 1-6	Self-explanatory.
Question 7	Describe your final decision on the employee's written request for an accommodation. A. If you APPROVE an accommodation, check the box for "Employee's Request APPROVED" and describe in detail the following: (1) The employee's disability

Stephenson, George E. (MDOC)

From: Stephenson, George E. (MDOC)
Sent: Tuesday, March 10, 2015 11:40 AM
To: Haas, Randall W. (MDOC)
Subject: RE: Leader Dog Prison Puppies

Thanks

From: Frick, Heather (MDOC) **On Behalf Of** Haas, Randall W. (MDOC)
Sent: Tuesday, March 10, 2015 11:28 AM
To: Steward, Darrell (MDOC); Stephenson, George E. (MDOC)
Subject: FW: Leader Dog Prison Puppies

FYI

From: Finco, Thomas (MDOC)
Sent: Monday, March 09, 2015 7:29 AM
To: Haas, Randall W. (MDOC)
Cc: Curtis, Bruce (MDOC); Finco, Thomas (MDOC)
Subject: RE: Leader Dog Prison Puppies

approved

Thomas G. Finco, Deputy Director
Correctional Facilities Administration
Michigan Department of Corrections
Phone: 517-373-0287
Fax: 517-373-3882



From: Haas, Randall W. (MDOC)
Sent: Wednesday, March 04, 2015 8:32 AM
To: Finco, Thomas (MDOC)
Cc: Curtis, Bruce (MDOC)
Subject: Re: Leader Dog Prison Puppies

It is kinda like you going back to being a post commander....short learning curve!

Sent from my iPhone

On Mar 4, 2015, at 8:16 AM, "Finco, Thomas (MDOC)" <FincoT@michigan.gov> wrote:

Shouldn't he give himself about six months to get his feet on the ground

Sent from my iPhone

On Mar 4, 2015, at 8:15 AM, Curtis, Bruce (MDOC) <CurtisB4@michigan.gov> wrote:

Would you give permission for Warden Haas to start a leader dog program at Macomb like the one at JCF? I don't have a problem with it as long as staff time is not diverted away from custody work. The program is very popular with the prisoner body as well as staff.

Sent from my iPad

Begin forwarded message:

From: "Haas, Randall W. (MDOC)" <HaasR2@michigan.gov>
Date: March 4, 2015 at 7:12:00 AM EST
To: "Curtis, Bruce (MDOC)" <CurtisB4@michigan.gov>
Subject: FW: Leader Dog Prison Puppies

Good Morning,

Have you had a chance to consider this request?

Thanks

From: Haas, Randall W. (MDOC)
Sent: Friday, February 27, 2015 7:12 AM
To: Curtis, Bruce (MDOC)
Subject: FW: Leader Dog Prison Puppies

Good Morning,

This program is a success at JCF. It is also currently at AMF and URF.

With your approval, I would like to begin the program at MRF.

Thanks for your support.

From: Melissa Spooner, LVT [mailto:Melissa.Spooner@LeaderDog.Org]
Sent: Tuesday, February 17, 2015 12:23 PM
To: Haas, Randall W. (MDOC)
Subject: Leader Dog Prison Puppies

Hello Warden Haase,

My name is Melissa and I am the new Coordinator of Prison Puppies at Leader Dogs for the Blind. I've spoken with Deb Donnelly, Sue Daniels and Brent Rohrig and they all have let me know that you have re-located to the Macomb Correctional Facility. I wanted to open our line of communication and touch base with you. From what I have heard you are interested in starting the Prison Puppies program at Macomb, which is very exciting (I grew up in Clinton Twp. and now live in Sterling Heights)! After you get settled in I would love the opportunity to come for a tour of your facility and meet with you and your staff. Please let me know your availability.

I look forward to hearing from you!

Melissa Spooner, LVT, VTS (Behavior), BS, KPA-CTP

Coordinator of Prison Puppies

Leader Dogs for the Blind

1039 S. Rochester Rd. • Rochester Hills, MI 48307-3115

Direct (248) 218-6686

Toll Free (888) 777-5332

Visit us online at leaderdog.org or 'like' us on [Facebook](https://www.facebook.com/leaderdog)
*Empowering people who are blind or visually impaired with lifelong skills for
independent travel through
quality Leader Dogs, highly effective client instruction and innovative services.*



Disclaimer: This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The recipient should check this email and any attachments for the presence of viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

RESPONSE TO DISABILITY ACCOMMODATION REQUEST

This form must be completed after an employee has filed a Disability Accommodation Request Form. The departmental Accommodation Coordinator (or other designated official) must complete Part A and send a copy to the requesting employee. (Civil Service Regulation 1.04 requires the Accommodation Coordinator to issue a written response within **eight weeks** after receiving a completed Disability Accommodation Request Form from an employee.)

PART A: ACCOMMODATION COORDINATOR'S RESPONSE TO REQUEST FOR ACCOMMODATION

1. Accommodation Coordinator's Name Elaine D. Davis	2. Coordinator's Title Human Resources Officer
3. Department/Agency 47/41	4. Date Request Received August 12, 2015
5. Employee's Name McKenzie, Kenneth	6. Employee's Identification Number [REDACTED]

7. Final Disposition of Request (Check one box and then describe or explain in detail.)

Employee's Request APPROVED (Describe the disability and the final, approved accommodation[s].)

Employee's Request DENIED (Explain the reason[s] for denying the requested accommodation[s].)

The request under the ADA is denied as we are not able to accommodate Mr. McKenzie's restrictions in his current position at Macomb Correctional Facility. However, as an accommodation, the Department is able to offer him a position as a Corrections Officer at DRC where he will not have the possibility of working around dogs at this time. Please see the attached letter.

Accommodation Coordinator's Signature <i>Elaine D. Davis</i>	Date September 3, 2015
---	---------------------------

PART B: EMPLOYEE'S ACKNOWLEDGMENT (When completed, return to Accommodation Coordinator.)

I acknowledge receipt of this answer and I AGREE DISAGREE (If you disagree, please explain and attach any necessary documentation.)

Employee's Signature	Date
----------------------	------

RECEIVED by MSC 12/20/2021 4:03:47 PM

RESPONSE TO DISABILITY ACCOMMODATION REQUEST INSTRUCTIONS FOR COMPLETING THE FORM

PART A: To be completed by the departmental Accommodation Coordinator or designee.

<u>Questions</u>	<u>Instructions</u>
Questions 1-6	Self-explanatory.
Question 7	<p>Describe your final decision on the employee's written request for an accommodation:</p> <p>A. If you APPROVE an accommodation, check the box for "Employee's Request APPROVED" and describe in detail the following:</p> <ol style="list-style-type: none"> (1) The employee's disability. (2) The accommodation approved. (3) How the approved accommodation addresses the functional limitations and essential job functions. <p>B. If you DENY the employee's request for an accommodation, check the box for "Employee's Request DENIED" and describe in detail your reason(s) for denying the request.</p>

After completing Part A, the Accommodation Coordinator or designee sends a copy of the completed form to the employee.

PART B: To be completed by the employee.

Instructions

The employee should review Part A and indicate agreement or disagreement with the final decision. If the employee disagrees with the final decision, the employee may provide an explanation and any necessary documentation to substantiate disagreement.

Upon completion of Part B, the employee keeps a copy and returns the signed copy of the Response to Disability Accommodation Request (and attached documentation, if applicable) to the departmental Accommodation Coordinator or designee.

NOTICE TO EMPLOYEE: Appeal of accommodation decision.

If an employee is dissatisfied with the final response of the Accommodation Coordinator or the Accommodation Coordinator fails to issue a final response within eight weeks, the employee may appeal through the appropriate grievance procedure or take other action authorized by law.



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

September 3, 2015

Mr. Kenneth McKenzie
[REDACTED]

Dear Mr. McKenzie:

This letter is in response to the ADA request you submitted on August 12, 2015. Being able to work all positions and all shifts is an essential function of a Corrections Officer position, and due to that, we are unable to accommodate you at Macomb Correctional Facility. However, as an accommodation, the Department is able to offer you a position as a Corrections Officer at DRC where you will not have the possibility of working around dogs at this time.

Please select one of the options below:

_____ Yes, I accept a transfer to DRC

_____ No, I decline a transfer to DRC

Signature

Date

Please sign, date, and return this letter to the Human Resources Office no later than September 14, 2015. If you accept the transfer, the effective date of the transfer will be October 11, 2015. If you decline the transfer, you will be placed on a medical leave as you are unable to perform the essential functions of the job at Macomb Correctional Facility.

If you have any questions, please contact me at (586) 749-4900 extension 170.

Sincerely,

Elaine D. Davis
Human Resources Officer
Macomb Correctional Facility

1. Position Code
COMPOSITE

**State of Michigan
Civil Service Commission**
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

RECEIVED by MSC 12/20/2021 4:03:47 PM

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections/41
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer E-9	10. Division Macomb Correctional Facility
5. Working Title of Position (What the agency titles the position) Corrections Officer	11. Section Custody
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor 11	12. Unit
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor 12	13. Work Location (City and Address)/Hours of Work 34625 26 Mile Rd, New Haven, MI 48048

14. **General Summary of Function/Purpose of Position**
Corrections Officer(s) will oversee and participate in the custody, security, and treatment of prisoners.

Duties include observation of prisoner activities, count of prisoners several times per shift, searching of prisoners, employees, Housing Units and other structures. Will attempt to obtain prisoner compliance with facility and departmental policy and procedures. Will be expected to respond quickly to calls for assistance in other areas of the prison as directed by control center or shift supervisor, observe and appropriately respond to critical incidents, including the writing of applicable reports. Must be able to communicate effectively. Other duties as assigned.

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 65

Observe prisoners activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of prisoners, employees, or visitors.

Individual tasks related to the duty.

Keep prisoners moving and prevent loitering in yard or building entrances during times of mass movement.

Remain alert and aware of prisoner activities and behaviors.

Conduct searches of prisoners, structures and areas.

Attempt to gain compliance with facility rules thru the use of effective communication, summary actions and disciplinary misconduct reports.

Duty 2

General Summary of Duty 2 % of Time 15

Count prisoners on jurisdiction several times during shift.

Individual tasks related to the duty.

Complete formal counts as required.

Account for prisoner's whereabouts several times per shift when prisoners are under supervision.

Duty 3

General Summary of Duty 3 % of Time 5

Respond quickly to critical incidents as directed

Individual tasks related to the duty.

Observe and appropriately respond to such critical incidents as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the security of the facility.

Respond quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor.

Assist in controlling disturbances and isolating instigators.

Appropriate response may include use of firearms.

Prepare written reports as indicated.

Duty 4

General Summary of Duty 4 % of Time 15

Other duties as assigned.

Individual tasks related to the duty.

Various duties are assigned according to work assignment.

May be required to transport prisoners via passenger vehicle, control entry and exit from the facility, identify employees, visitors and law enforcement when assigned to front or sallyport gate.

May supervise prisoner work crews, escort prisoners to various areas within the institution.

Duty 5

General Summary of Duty 5

% of Time _____

Individual tasks related to the duty.

-

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

Enforcing of facility rules and regulations- decide how compliance is best gained. Affects prisoner freedom of movement thru institution and good order of facility.

Authorize prisoner movement- Send prisoners to call-outs and details-check if on top lock or LOP sanction-check passes etc.-Determine authenticity of passes. Affects prisoner movement and good order of facility.

Determine actions to be taken when dealing with critical incidents, amount of force to be used to control certain situations. Affects safety and security of fellow staff and institution.

17. Describe the types of decisions that require your supervisor's review.

- Cell moves
- Reconciliation Sheets
- Authorization to pass out certain equipment
- Authorization to enter restricted area
- Use of force if time and circumstances permit.

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

May include performance of strenuous tasks requiring muscular strength and coordination, and cardiovascular endurance. Ability to work in environment with various degrees of discomfort. Ability to wear and operate respiratory protection devices. Walking, standing for extended periods, sitting, stooping, stair climbing and reaching.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- Complete and sign service ratings.
- Provide formal written counseling.
- Approve leave requests.
- Approve time and attendance.
- Orally reprimand.
- Assign work.
- Approve work.
- Review work.
- Provide guidance on work methods.
- Train employees in the work.

21. I certify that the above answers are my own and are accurate and complete.

Signature Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

Yes, I agree.

23. What are the essential duties of this position?

Corrections Officer(s) will oversee and participate in the custody, security, and evaluation of prisoners.

Duties include observation of prisoner activities, count of prisoners several times per shift, searching of prisoners, employees, Housing Units and other structures. Will attempt to obtain prisoner compliance with facility and departmental policy and procedures. Will be expected to respond quickly to calls for assistance in other areas of the prisoner as directed by control center or shift supervisor, observe and appropriately respond to critical incidents, including the writing of applicable reports. Must be able to communicate effectively. Other duties as assigned.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

Completion of 15 semester (23 term) credits in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.)

OR

Possession of 30 semester (46 term) credits leading toward a degree in any major. (This option is not available after date of hire.)

RECEIVED by MSC 12/20/2021 4:03:47 PM

25. What is the function of the work area and how does this position fit into that function?

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

Completion of 15 semester (23 term) credits in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.)

OR

Possession of 30 semester (46 term) credits leading toward a degree in any major. (This option is not available after date of hire.)

EXPERIENCE:

1 year experience at CO E-8.

KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of Departmental policies, rules, regulations and procedures. Knowledge of security procedures and techniques. Ability to read, learn and apply facility and departmental policies, procedures, rules, regulations and Employee Handbook. Ability to maintain composure during stressful situations. Ability to relate to prisoners and gain their respect and confidence. Ability to successfully complete in-service education and training programs.

CERTIFICATES, LICENSES, REGISTRATIONS:

None.

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

RECEIVED by MSC 12/20/2021 4:03:47 PM

MICHIGAN DEPARTMENT OF CIVIL SERVICE
JOB SPECIFICATION

CORRECTIONS OFFICER

JOB DESCRIPTION

Employees in this job oversee and participate in the custody, security, and treatment of prisoners in correctional facilities including major institutions, camps, and correction centers.

There are two classification levels in this job.

Position Code Title – Corrections Officer-E

Corrections Officer 8

This is the entry level. At the entry level, employees are initially assigned to the corrections officer training academy, where they are required to successfully complete the approved training program designed to provide the knowledge and skills required to function as a corrections officer. Upon graduation from the training academy, the officer will complete the probationary period at his/her assigned correctional facility. The employee at this classification functions in one of two capacities; (1) overseeing and participating in the custody, security, and treatment of prisoners while learning and developing the interpersonal skills required to perform a range of corrections officer assignments; or; (2) performing a limited range of corrections officer assignments involving limited contact or interaction with prisoners.

Corrections Officer E9

This is the experienced level. At the experienced level, the employee oversees and participates in the custody, security, and treatment of prisoners in assignments, which involve substantial face-to-face contact with prisoners. The employee uses independent judgment in making decisions requiring interpretation and application of departmental guidelines to specific situations.

NOTE: Employees who perform the limited range of corrections officer assignments do not progress beyond the 8-level. Employees learning a full range of Corrections Officer assignments generally progress to the E9-level based on satisfactory performance and possession of the required experience.

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

CORRECTIONS OFFICER

PAGE NO. 2

Corrections 8 (Limited range of assignments)

On a post assignment:

Observes prisoners' activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of prisoners, employees, or visitors.

Responds quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor. Assists in controlling disturbances and isolating instigators.

Observes and appropriately responds to such "critical incidents" as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the security of the facility and prepares written reports. Appropriate response may require the use of firearms.

Prepares written records and reports related to the work.

Performs related work appropriate to the classification level as assigned.

Corrections Officer 8 (Full range of assignments) and E9

Observes prisoners' activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of employees, visitors, or other prisoners.

Counts prisoners under his/her jurisdiction several times during the shift and transmits count totals to the control officer.

Conducts thorough searches of prisoners, visitors, employees, mail, packages, cellblocks, and other structures for such prohibited items as critical tools, weapons, drugs, or other contraband.

Keeps prisoners moving and prevents loitering in yards or building entrances during periods of mass movement.

Attempts to obtain prisoners' compliance with facility rules and regulations. Writes Disciplinary Actions (tickets) on prisoners for rule's infractions.

Responds quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor. Assists in controlling disturbances and isolating instigators.

Attempts to modify prisoner attitudes and behaviors through one-to-one or group interaction.

Observes and appropriately responds to such "critical incidents" as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the

RECEIVED by MSC 12/20/2021 4:03:47 PM

CORRECTIONS OFFICER

PAGE No. 3

security of the facility and prepares written reports. Appropriate response may include use of firearms.

Transports prisoners via passenger vehicles ranging from busses to automobiles, to various locations outside the facility such as courts, medical centers, or other correctional facilities, ensuring that all security procedures are followed.

Works with resident unit managers and assistant resident unit supervisors, in such areas as determination of prisoner security classifications and parole eligibility, disciplinary proceedings, and prisoner counseling.

Controls entry and exit from the facility; identifies employees, visitors and law enforcement personnel entering the facility; escorts and monitors visitors while in the facility.

Oversees prisoners on various work assignments.

Ensures that security systems, fire fighting equipment, fire detection systems, and other equipment in the facility are in operating condition.

Trains corrections officers assigned as on-the-job trainees or newly assigned training academy graduates.

Prepares written records and reports related to the work.

Assists in maintaining proper standards of personal care and hygiene of prisoners.

May take part in searches for escaped prisoners.

Works to maintain stable interpersonal dynamics with prisoners and staff.

May dispense prescribed medication to prisoners as directed.

May operate such computerized equipment as gate controls.

May oversee construction areas within a facility to assist work crew leaders with general security and safety of the area.

May supervise prisoner work crews outside correctional facility.

JOB QUALIFICATIONS

Knowledge, Skills, and Abilities

NOTE: Some knowledge is required at the entry level and considerable knowledge is required at the experienced level.

RECEIVED by MSC 12/20/2021 4:03:47 PM

Knowledge of individual and group counseling techniques.

Knowledge of basic first-aid procedures.

Knowledge of accident prevention.

Knowledge of various prisoner sub-cultures.

Knowledge of prisoner behaviors and problems.

Knowledge of standards of hygiene and health care standards about contagious diseases.

Knowledge of security procedures and techniques.

Knowledge of departmental rules, regulations, policies, and procedures.

Ability to relate to prisoners and gain their respect and confidence.

Ability to oversee prisoners in the performance of various work functions.

Ability to read, learn, and apply facility and departmental policies, procedures, rules, regulations, and employee handbook.

Ability to successfully complete in-service education and training programs.

Ability to maintain composure during stressful situations.

Ability to observe critically, obtain accurate data, and prepare written records and reports.

Ability to divert violence or ease tension through persuasion and understanding, rather than use of force.

Ability to provide a positive role model to the prisoner population.

Ability to train and oversee recruits and trainees.

Ability to communicate effectively.

Working Conditions

An employee may be assigned to work any day of the week, or on any shift or assignment.

CORRECTIONS OFFICER

PAGE NO. 5

The work is performed in an environment that is extremely uncomfortable and where the work involves a significant chance of incurring a disabling or life threatening injury.

Some jobs require an employee to work in an uncomfortable environment.

Some jobs require an employee to work in high stress situations.

Some jobs require an employee to work under hazardous situations.

Physical Requirements

The job duties require an employee to meet the physical requirements of the work, which includes the performance of strenuous tasks requiring muscular strength and coordination, and cardiovascular endurance.

Ability to work in an environment with various degrees of discomfort.

Ability to wear and operate respiratory protection devices.

Ability to operate a motor vehicle.

Considerable knowledge of the techniques of self-defense, disturbance control, firearms, fire fighting, and detection of weapons and contraband.

Ability to qualify with and use various firearms.

Skill in the use of firearms and fire fighting equipment.

Ability to learn and apply self-defense and other procedures for dealing with violent or abusive prisoners.

Education

Possession of a high school diploma or a GED Certificate and fifteen semester (or 23 term) college credit hours in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.)

OR

Possession of 30 semester (or 46 term) college credit hours leading toward a degree in any major. (This option is not available after date of hire.)

RECEIVED by MSC 12/20/2021 4:03:47 PM

Experience

Corrections Officer 8

No specific type or amount of experience is required.

Corrections Officer E9

One year of experience as a Corrections Officer or a Corrections Medical Aide.

Alternative Education and Experience

Corrections Officer 8

Possession of a bachelor's degree in any major.

OR

Completion of a recognized corrections training program in another state or federal jurisdiction, completion of at least two years of full-time corrections officer work experience, and must be currently employed satisfactorily in a corrections position or have left corrections employment in satisfactory status.

Special Requirements, Licenses, and Certifications

Any individual with a felony conviction, a controlled substance violation in any jurisdiction "including military", pending felony or misdemeanor charges, a domestic violence conviction or outstanding warrants, is ineligible for consideration for employment by Michigan Department of Corrections.

The Department of Corrections will not hire individuals who have been convicted of a felony or who have felony charges pending, in accordance with Public Act 140 of 1996.

In addition, an applicant who has been convicted of any other misdemeanor shall not be eligible for employment until one year after satisfactory completion of any sentence imposed, including probation.

At least eighteen (18) years of age at time of employment as a corrections officer.

Ability to pass a post-offer medical exam, a drug screen, and a physical fitness test.

Ability to effectively perform essential job functions with or without accommodations.

Ability to successfully complete a 640 hour training academy which includes written examinations and practical skill examinations.

Willingness to submit to a thorough background investigation designed to assess the applicant's suitability for employment as a corrections officer.

Satisfactory completion of annual recertification and training.

CORRECTIONS OFFICER

PAGE NO. 7

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION

<u>Job Code</u>	<u>Job Code Description</u>
CORROFR	Corrections Officer

<u>Position Title</u>	<u>Position Code</u>	<u>Pay Schedule</u>
Corrections Officer-E	CORROFRE	C12-001

ECP Group 1
12/12/01
GJH/VLWT/gjh

RECEIVED by MSC 12/20/2021 4:03:47 PM

RESPONSE TO DISABILITY ACCOMMODATION REQUEST

This form must be completed after an employee has filed a Disability Accommodation Request Form. The departmental Accommodation Coordinator (or other designated official) must complete Part A and send a copy to the requesting employee. (Civil Service Regulation 1.04 requires the Accommodation Coordinator to issue a written response within eight weeks after receiving a completed Disability Accommodation Request Form from an employee.)

PART A: ACCOMMODATION COORDINATOR'S RESPONSE TO REQUEST FOR ACCOMMODATION

1. Accommodation Coordinator's Name Elaine D. Davis	2. Coordinator's Title Human Resources Officer
3. Department/Agency 47/41	4. Date Request Received August 12, 2015
5. Employee's Name McKenzie, Kenneth	6. Employee's Identification Number [REDACTED]

7. Final Disposition of Request (Check one box and then describe or explain in detail.)

Employee's Request APPROVED (Describe the disability and the final, approved accommodation[s].)

Employee's Request DENIED (Explain the reason[s] for denying the requested accommodation[s].)

The request under the ADA is denied as we are not able to accommodate Mr. McKenzie's restrictions in his current position at Macomb Correctional Facility. However, as an accommodation, the Department is able to offer him a position as a Corrections Officer at DRC where he will not have the possibility of working around dogs at this time. Please see the attached letter.

RECEIVED
SEP 15 2015
HUMAN RESOURCES OFFICE

Accommodation Coordinator's Signature <i>Elaine D. Davis</i>	Date September 3, 2015
---	---------------------------

PART B: EMPLOYEE'S ACKNOWLEDGMENT (When completed, return to Accommodation Coordinator.)

I acknowledge receipt of this answer and I AGREE DISAGREE (If you disagree, please explain and attach any necessary documentation.)

(SEE ATTACHMENT)!

Employee's Signature <i>Kenneth A. McKenzie</i>	Date 9-8-15
--	----------------

RECEIVED by MSC 12/20/2021 4:03:47 PM

Davis, Elaine D. (MDOC)

From: McKenzie, Kenneth (MDOC)
Sent: Tuesday, September 08, 2015 11:40 AM
To: Davis, Elaine D. (MDOC)
Subject: Disability Accomodation Appeal Statement

1. I meet the basic requirements of my job in performing all essential functions(see job description per civil service & state of Michigan). I have been a Corrections Officer for 15 years. I am fully trained and qualified per all training standards for the position of Corrections Officer. I have continued to perform all duties under the modified assignment work schedule being applied by my shift command at this time. I am being placed in housing units 2,4,5,6,and 7 away from the animals who are housing in Units 1 and 3 on facility grounds.
2. To continue to schedule/accommodate me by placing me in housing units# 2,4,5,6 and 7 away from animals does not cost money or create an undue hardship for the facility or the State of Michigan. The fact that I am being accommodated in this fashion right now demonstrates that this accommodation is working and practical in order to accommodate my allergic condition to dogs,. And, keeps me working here at Macomb Facility with the ability to continue to perform all essential duties of my position as required including responding to duresses within my immediate location. The fact is officers do not work in every assignment at one time. Nor will the dog(s) be located on every position/assignment on facility grounds. Because the housing units of Unit#1 and 3 is the issue where the dogs are being housed, this is a matter of scheduling my work assignment to another housing unit(2,4,5,6,and7) where I will not have contact with the animals. Not changing my geographic work location/site to another Correctional facility.
3. Macomb Correctional Facility and The State of Michigan have failed to explain in detail specifically what essential functions of my job I cannot perform. As it states shall be done on the Disability Accommodation Request Form CS-1668#7 in order to justify transferring me to DRC Facility in Detroit Michigan that is 19miles/30minutes one way away from my home and current work.
4. I live in Macomb County 6miles/15minutes away from my work site of Macomb Correctional Facility and home. My son attends school in Macomb School District System. To be transferred to DRC Facility 40miles/30 minutes away will create an undue hardship for me financially and otherwise. I will also not be guaranteed to work the same midnight shift position I am currently work at this time.
5. In closing the Leader Dogs serve no significant purpose here for the officer or the facility directly. The dog cannot perform CPR, count prisoners, conduct searches, detect or prohibit behavior that might be a threat to security, respond to critical incidents, control disturbances, transport prisoners, control movement, use a fire arm, ECD or AED. Nor can he write reports. All scenarios I am trained by The State of Michigan Department of Corrections to do. Therefore, the decision to transfer me out to DRC Facility and NOT continue to accommodate my health issue appears to be punitive and retaliatory because I suffer from a health condition brought on by the introduction of this animal to my work site. I am appeal to stay employed at Macomb Correctional Facility at this time.



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

September 10, 2015

Mr. Kenneth McKenzie
[REDACTED]

Re: Americans with Disabilities Act (ADA) Appeal

Dear Mr. McKenzie:

This letter is to inform you that I have received your ADA appeal statement concerning the denial of your request to work in assignments where you would not have contact with the dogs that are at the Macomb Correctional Facility, as well as not to respond to an emergency and/or duress in any areas where dogs may be housed.

As indicated to you in the September 3, 2015 ADA response letter from Elaine Davis, the ability to work all positions and all shifts is an essential function of a Corrections Officer position. In addition to being an essential function, the ability to move officers around the facility to any position at any time, and the ability to respond to all emergencies and/or duress calls is a safety and security issue for the facility. Your physician has indicated that due to your disability, you are unable to work any assignment where you may be exposed to dogs. In addition, your physician has indicated that performing this job function may result in a direct safety or health threat to either yourself and/or coworkers. The ADA does not require an employer to remove an essential function in order to accommodate an employee. The ADA does not require an employer to allow for an accommodation that may result in a direct safety or health threat to the employee or other coworkers.

In your appeal, you have indicated that you are currently working in a modified or light duty assignment and wish to continue to work in that capacity. However, the Department does not have permanent light duty Corrections Officer positions. Based on the information indicated above, and the information you provided in your ADA request, the Department is unable to accommodate you on a permanent basis at the Macomb Correctional Facility. The Department does however, have vacant Corrections Officer positions at the Detroit Reentry and Detention Center, a facility located within a reasonable driving distance from the Macomb Correctional Facility. This facility does not have a prisoner program that may require you to be exposed to dogs.

The Department is in no way questioning your qualifications as a Corrections Officer, nor is this accommodation response of a transfer to a different facility a punitive measure. A transfer to a vacant position that allows the employee to perform the essential functions of the job is considered a reasonable accommodation under the law. Your appeal did not provide any additional information that would allow you to perform the essential functions of the Corrections Officer position at the

Macomb Correctional Facility. If you and/or your physician can offer an alternative accommodation that would allow you to work all assignments at the Macomb Correctional Facility and respond to all emergencies and/or duress calls, we would certainly be open for further discussion. Absent any additional information, your appeal to remain in modified duty at the Macomb Correctional Facility is denied.

Sincerely,

Joanne M. Bridgford
EEO Administrator
MDCS/MDOC

cc: Ms. Elaine D. Davis, HRO

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 471-2015-03337
and EEOC		
<i>State or local Agency, if any</i>		
Name (indicate Mr., Ms., Mrs.) Kenneth McKenzie	Home Phone (incl. Area Code) [REDACTED]	Date of Birth [REDACTED]
Street Address City, State and ZIP Code [REDACTED]		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)		
Name MICHIGAN DEPARTMENT OF CORRECTIONS, MACOMB FACILITY	No. Employees, Members 201 - 500	Phone No. (include Area Code) (586) 749-4900
Street Address City, State and ZIP Code 34625 26 Mile Road, New Haven, MI 48048		
Name No. Employees, Members Phone No. (include Area Code) Street Address City, State and ZIP Code		
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 07-23-2015 2015 SEP 09-09-2015 <input checked="" type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I began working at for the above-named employer on October 1, 2000 and am currently employed as a corrections officer. I am an individual covered by the Americans with Disabilities Act.</p> <p>On or about July 23, 2015 I requested and was granted a reasonable accommodation. On September 3, 2015 the accommodation was revoked without explanation; I was told my only options were to transfer locations or take medical leave.</p> <p>I believe I was denied reasonable accommodation in violation of the Americans with Disabilities Act of 1990, as amended.</p>		
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State or Local Agency Requirements <i>[Signature]</i> Investigator
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)
Date Sep 09, 2015	Charging Party Signature <i>[Signature]</i>	

RECEIVED

SEP 14 2015

RECEIVED



FedEx Office

FedEx Kinko's is now FedEx Office

Fax Cover Sheet

Date Sept. 23, 2015

Number of pages 5 (including cover page)

To:

From:

Name Ms. E Davis HR

Name Kenneth McKenzie

Company Macomb Correctional Facility Company _____

Telephone 586 749-4900 Ext. 170

Telephone (586) 292-8205

Fax 1586 749 9417

Comments Here is the documentation from my Allergist so that further Alternative Accommodations can be discussed so that I may remain at Macomb Correctional Facility.



Fax - Local Send



Fax - Domestic Send



Fax - International Send

fedex.com 1.800.GoFedEx 1.800.463.3339

RECEIVED by MSC 12/20/2021 4:03:47 PM

Asthma & Allergy

INSTITUTE OF MICHIGAN JEFFREY M. BRUNER, D.O., P.C. • ANGELA M. IACOBELLI, M.D.
42607 GARFIELD • CLINTON TOWNSHIP, MI • 48038 • (586) 286-9010

September 21, 2015

Ms. Elaine Davis, Accommodations Coordinator, Macomb Correctional Facility
Ms. Joanne Bridgford, EEO Administrator / MDCS / MDOC


RE: MCKENZIE, KENNETH
D.O.B: [REDACTED]

To Whom It May Concern:

I received a request to forward you information concerning the above patient. Kenneth was initially seen, evaluated, and assessed in the office on September 21, 2015. Apparently, he has had problems with congestion, sneezing, runny nose, itchy watery eyes, and coughing. As a result of the evaluation and assessment, I feel avoidance measures and medical regimen would hopefully be effective for him in controlling his symptoms. Initially we are going to place him on antihistamines and medications which should stabilize him. As a result of this, he should be doing fairly well and will not have to be moved from the work environment where he is presently. He will also be starting immunotherapy injections which should be quite beneficial in the long run.

I hope this information will prove beneficial to you in the continuing care of your patient. If you should have any questions, please do not hesitate to contact me.

Sincerely,


Jeffrey M. Bruner, D.O., FCCP, FACOI, FAAAAI

JMB/vn

RECEIVED by MSC 12/20/2021 4:03:47 PM

Jeffrey M. Bruner, D.O., P.C.
Angela M. Iacobelli, M.D.
Pediatric and Adult Allergy & Immunology
Bronchial Asthma

42607 Garfield
Clinton Township, MI 48038-1138
(586) 286.9010

- Excuse
- Certificate of Care
- Permission to Return to Work
- Permission to Return to School

Date 9/21/15

Patient's Name Kenneth McKenzie

The above named patient has been under my care for the following condition:
Asthma + Allergies

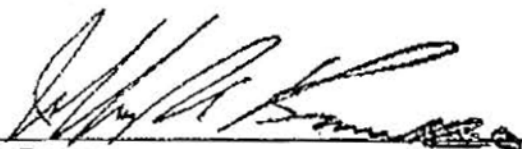
He/she had an appointment in this office on 9/21/15 @ 1:45 pm

He/she is able to return to work/school on 9/22/15

Restrictions: 0

Please excuse this absence.

Thank you,



Dr. Jeffrey M. Bruner
Dr. Angela M. Iacobelli

DR. PAULENA SINGER MD
Diplomate, The American Board of Family Medicine
DEA # FS0763809

Bloomfield Medical Village • Suite A1
6405 Telegraph Road - Bloomfield Hills, MI 48301
248-792-3690 • 248-792-3691 • 248-792-3692 • Fax 248-792-3693

Name Kenneth McKenzie
Address _____ Date 9/16/15

R Refer to allergist
I - chronic AP
- ? dogs
TO eval + treat + test
via

REFILL _____ TIMES _____ P/N _____ NR _____
Another brand of generically equivalent product, identical in dosage form and content of active ingredients, may be dispensed unless box is initialed D.A.W.

RECEIVED BY MSC 12/20/2021 4:03:47 PM

20/2021 4:03:47 PM

09/23/2015 15:16 586--412-8124

JEFFREY M. BRUNER, D.O.
NPI: 1215955422

ANGELA M. JACOBELLI, M.D.
NPI: 1154356962

Pediatric and Adult Allergy and
Clinical Immunology • Bronchial Asthma
42607 Garfield • Clinton Twp., MI 48038
(586) 286-9010 • Fax (586) 286-7910

FEDDEX OFFICE 0483

Name Kenneth Mckenzie Date 9/21/15

Rx Address _____

Patient was seen and evaluated
today 9/21/15 and may return
to work. 9/23/15

PAGE 05

Refill _____ Times

Dr. 

Defendants-Appellants' Page 0036

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KENNETH MCKENZIE,

Plaintiff,

Case No.: 18-002451-CD
Hon.: MURIEL D. HUGHES

v

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for *Plaintiff*
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000/ Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

ADAM R. DE BEAR (P80242)
Assistant Attorney General
Attorney for Defendants
Michigan Dept. of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162
(517) 373-2060 - Fax
debeara@michigan.gov

RASOR LAW FIRM, PLLC

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND JURY DEMAND**

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

/s/ Andrew Laurila
Andrew Laurila (P78880)

NOW COMES Plaintiff, KENNETH MCKENZIE, by and through his attorneys, RASOR LAW FIRM, PLLC, and for his First Amended Complaint against the above-named Defendants, hereby state as follows:

JURISDICTION AND PARTIES

1. This cause of action involves violations of Plaintiff’s civil rights, as secured by the United States and Michigan Constitutions, and is brought pursuant to the statutes and common law of the State of Michigan and pendant federal law claims against the above named Defendants.

2. At all times relevant to this lawsuit, Plaintiff KENNETH MCKENZIE (herein “Plaintiff”) was a resident of the City of Sterling Heights, County of Macomb, and State of Michigan.

3. Defendant MICHIGAN DEPARTMENT OF CORRECTIONS (hereinafter “MDOC”) is a governmental entity created pursuant to the laws of the State of Michigan, and Defendant State of Michigan is a state government.

4. Defendants MDOC and the State of Michigan are public employers.

5. Defendant MDOC and Defendant State of Michigan are both “employers” within the meaning of Michigan Persons with Disabilities Civil Rights Act, M.C.L. §37.1201(b) (hereinafter “PWDCRA”).

6. Defendant MDOC and Defendant State of Michigan are both a “program or activity” receiving Federal assistance within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a)-(b).

7. Defendant MDOC and Defendant State of Michigan are both a “public entity” within the meaning of Title II of the Americans With Disabilities Act, § 12131 (hereinafter “ADA”),

8. Defendant Warden Patrick Warren is subject to liability in his official capacity pursuant to Title I of the ADA, § 12101, et seq., via *Ex Parte Young*, 29 U.S. 123 (1908).

9. Defendant, Macomb Correctional Facility, is a male correctional facility operated by MDOC in the City of New Haven, County of Macomb, State of Michigan.

10. At all times relevant to this lawsuit, Warden Patrick Warren was an employee of Defendant, MDOC, and is and was acting under the color of state law and in the course and scope of his employment and is being sued in his official capacity only.

11. At all material times relevant to this lawsuit, Plaintiff was an employee, and Defendant MDOC was his employer.

12. Venue is proper in this judicial circuit under MCL § 600.1615 because Defendant MDOC is a governmental entity that exercises governmental authority in Wayne County.

13. The amount in controversy in this action exceeds Twenty-Five Thousand Dollars (\$25,000.00) exclusive of interest, costs and attorney’s fees, and this case is otherwise properly within the jurisdiction of the Wayne County Circuit Court.

ADMINISTRATIVE PROCEDURES

14. Plaintiff filed a charge with the EEOC based on disability discrimination on September 9.

15. After completing its investigation, the EEOC found probable cause that Defendant MDOC was in violation of the ADA on September 27, 2016.

16. After attempting to conciliate the dispute, because Defendant MDOC refused the terms of the EEOC’s proposed conciliation agreement, Plaintiff’s charge was transferred to the Department of Justice for possible litigation on December 27, 2016.

17. After investigating Plaintiff's claims, the Department of Justice determined it would not pursue charges on Plaintiff's behalf, and Plaintiff received a Right to Sue letter on December 4, 2017.

18. Plaintiff has satisfied all jurisdictional requirements set forth by the EEOC for bringing federal causes of employment discrimination.

FACTUAL ALLEGATIONS

19. Plaintiff began working for Defendant MDOC in 1997 as a corrections officer.

20. Defendant MDOC started a "leader dog" program at the Macomb Facility, where inmates trained dogs to become leader dogs for the blind.

21. The "leader dog" program only encompassed certain housing units in the facility.

22. Plaintiff was assigned to a housing unit that maintained inmates who had the dogs, and thus Plaintiff was required to regularly come into contact with the dogs during his shifts.

23. When Plaintiff would come into close contact with the dogs, he experienced allergic symptoms, such as but not limited to, itchy, watery eyes, severe chest and nasal congestion, fatigue and difficulty breathing.

24. Plaintiff immediately brought these concerns regarding his continual interactions with dogs and what he described as allergy-related reactions to the dogs' presence to his supervisor, Captain Holcomb.

25. Per Captain Holcomb's instructions and Defendant MDOC's policies, Plaintiff then filed a "Disability Accommodation Request and Medical Statement."

26. Through the formal accommodation request and other communications with Defendant MDOC, Plaintiff requested the reasonable accommodation of being placed away from the housing units that have dogs so he would not have regular, direct contact with them.

27. Plaintiff's healthcare provider also completed a section of his accommodation form where she documented the same requests and accommodations as Plaintiff.

28. Plaintiff suffers from bronchial asthma and allergies to dog dander.

29. For a brief period Defendant permitted Plaintiff to a temporary modified work schedule placing him in housing units away from the presence of dogs, but Defendant revoked that on September 3, 2015.

30. Due to doctors' appointments and treatment for his disability, Plaintiff was forced to take days off from work during that time to receive allergy shots, among other treatment.

31. Following Plaintiff's request for an accommodation, the Macomb Facilities Accommodation coordinator, Elaine Davis, refused to assist Plaintiff or inquire into positions that might have been available pending a determination of Plaintiff's formal request for an accommodation.

32. Defendant MDOC denied Plaintiff's accommodation request on the basis that an essential function of the Corrections Officer position requires "the ability to work all positions and all shifts."

33. Defendant's denial occurred after Plaintiff saw an allergist, Dr. Bruner, and received a report from Dr. Bruner on September 21, 2015, stating that Plaintiff had a

positive allergic reaction to dogs and that he should avoids dogs and have no direct contact with the animals.

34. Despite Defendant MDOC’s denial of Plaintiff’s permanent request, Plaintiff continued to seek temporary relief from the housing units containing dogs from his supervisors.

35. Plaintiff’s supervisor, Captain Holcomb, refused to permit Plaintiff to receive temporary accommodations following the September 3 denial.

36. Defendant’s reason for failing to accommodate Plaintiff unreasonably misconstrued and ignored Plaintiff’s specific request and needs and failed to provide a valid explanation in lieu of the circumstances for its refusal.

37. Defendant then began to ignore Plaintiff’s continued requests and complaints, the same requests that continue to this day.

38. One of the reasonable accommodations Plaintiff sought from Defendant MDOC was a position in the correctional facility warehouse, which at the time had two available positions.

39. The warehouse positions did not have interactions with dogs.

40. Instead of permitting Plaintiff one of these positions, Defendant MDOC gave these positions to two other corrections officers.

41. One of the individuals who received this warehouse position, CO (first name unknown) Sweets, had been on light duty after a work-related injury, and Elaine Davis had placed her in the warehouse as a transitional placement.

42. Ultimately Ms. Davis’ transitional placement in the warehouse became permanent.

43. Despite Plaintiff requesting a similar accommodation as Ms. Davis, Defendant ignored his reasonable request and failed to find any other reasonable accommodation.

44. Following Plaintiff's formal request for an accommodation, and the filing of his EEOC charge of discrimination, Plaintiff experienced more hostile interactions from his supervisors, who seemed more confrontational towards him.

45. Fatima Olden, another individual who requested the same reasonable accommodation as Plaintiff, was also denied such a request.

46. Plaintiff was informed the only accommodation available to him would be to transfer to another corrections facility that was much farther away and inconvenient for him to travel to.

COUNT I
VIOLATION OF M.C.L. § 37.1101, et seq., THE MICHIGAN
PERSONS WITH DISABILITIES CIVIL RIGHTS ACT — DISCRIMINATION
AND/OR FAILURE TO ACCOMMODATE
AS TO DEFENDANTS' MDOC AND STATE OF MICHIGAN

47. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 46, as if fully set forth herein.

48. The Michigan Persons with Disabilities Civil Rights Act, M.C.L. § 37.1101 *et seq.*, ("PWDCRA") prohibits the discharge or otherwise discrimination against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

49. The PWDCRA also requires an employer to "accommodate a person with a disability for purposes of employment ... unless the person demonstrates that the accommodation would impose an undue hardship."

50. At all relevant times, Plaintiff was a qualified individual with a disability within the meaning of the PWDCRA. Specifically, Plaintiff has a physical impairment that substantially limits one or more of his major life activities, has a record of the impairment, and/or Defendant regarded Plaintiff as having such an impairment.

51. Plaintiff's asthma and/or allergies limited, and/or were regarded as limiting, the substantial major life activities of performing manual tasks, breathing, working, and the operation of his respiratory system.

52. Plaintiff is qualified for the position and could perform the essential job duties of a corrections officer with or without a reasonable accommodation.

53. Plaintiff's disability was unrelated to Plaintiff's ability to perform his duties and essential functions of a corrections officer.

54. Even though Defendant had available accommodations that were not unduly burdensome to Defendant in any manner, Defendant refused to accommodate Plaintiff's written request for a reasonable accommodation.

55. Defendant MDOC's policies regarding when it permits an accommodation, how it determines an accommodation is warranted, and how it defines the essential functions of a job duty for corrections officers are facially discriminatory and violate the PWDCRA and ADA.

56. Defendant violated the PWDCRA when it discriminated against Plaintiff on the basis of his disability by failing to accommodate his reasonable requests for an accommodation.

57. Defendant treated Plaintiff, because of his disability, more harshly than it treated other similarly-situated employees for the same conduct.

58. Plaintiff is under the information and belief that Defendant, through its agents, representatives, and employees, treated Plaintiff differently from similarly situated employees, in the terms and conditions of his employment, based upon the unlawful, stereotypical, generalized consideration of Plaintiff's disability and/or requests for accommodations.

59. Another individual, Fatima Olden, who had the same disability or was regarded as having the same disability, was similarly discriminatorily treated by Defendant and denied the same reasonable requests for accommodations.

60. Defendant's actions were intentional and in disregard of Plaintiff's rights and sensibilities.

61. Defendant failed to make good faith efforts to establish and enforce policies to prevent illegal discrimination against its employees, including disability discrimination.

62. Defendant did not engage in any interactive process to attempt to accommodate Plaintiff, but instead refused.

63. Defendant failed to properly train or otherwise inform its supervisors and employees concerning their duties and obligations under the civil rights laws, including the PWDCRA.

64. As a direct and proximate result of Defendant's unlawful action, Plaintiff has sustained injuries and damages, including, but not limited to: potential loss of earning capacity, loss of career and employment opportunities, loss of employee benefits, humiliation and embarrassment, mental and emotional distress, and loss of everyday pleasures of everyday life.

65. Pursuant to the PWDCRA, Defendants are liable to Plaintiff for all damages allowed under state law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs, interest, and attorney fees so wrongfully incurred, as the Court deems just.

COUNT II
PWDCRA RETALIATION AS TO DEFENDANTS
MDOC AND STATE OF MICHIGAN

66. Plaintiff reasserts and re-alleges each and evert allegation contained in paragraphs 1 through 65, as if fully set forth herein.

67. The PWDCRA, M.C.L. § 37.1602(a), prohibits retaliation against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

68. At all times relevant, Plaintiff was an employee of Defendant covered by and within the meaning of M.C.L. § 37.1201.

69. As an employer within the meaning of the PWDCRA, M.C.L. § 37.1201(b), Defendant owed Plaintiff a duty not to retaliate against him with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of his protected activities.

70. Plaintiff engaged in the protected activity of requesting a reasonable accommodation pursuant to the PWDCRA and also when he filed his EEOC charge of discrimination regarding Defendant's discrimination.

71. Defendant had knowledge of Plaintiff's protected activities as set forth in the preceding paragraphs.

72. Had Plaintiff not requested a reasonable accommodation or filed his charge of discrimination, Plaintiff would not have been subjected to adverse treatment from his supervisors.

73. Immediately following Plaintiff's request for an accommodation and then closely following his charge of discrimination, Plaintiff's supervisors began treating him more hostile and confrontational.

74. Plaintiff had a spotless employment record before any of this occurred regarding his request for accommodation and ensuing filing of the charge of discrimination.

75. After initially permitting Plaintiff to an accommodation, Defendant then rescinded that despite it being reasonable and without providing Plaintiff a legitimate basis for such rescission.

76. Plaintiff's complaints and requests following the September 3 rescission also went on deaf ears and Plaintiff's supervisors became more willing to completely ignore Plaintiff's future, ongoing requests and/or complaints.

77. Defendant's actions in retaliating against Plaintiff on the basis of his request for an accommodation and filing his EEOC charge were conducted with malice or reckless indifference to Plaintiff's federally protected rights.

78. Defendant failed to make good faith efforts to establish and enforce policies to prevent illegal retaliation against its employees

79. Defendant, by and through its agents, servants, and/or employees, subsequently took adverse, retaliatory actions against Plaintiff including, but not limited to, denying Plaintiff conditions, terms, opportunities, and privileges provided to other employees of Defendant.

80. Defendant and its agents, servants and/or employees' actions were intentional with reckless indifference to Plaintiff's rights and sensibilities.

81. As a direct and proximate result of Defendants' unlawful action, Plaintiff has sustained injuries and damages, including, but not limited to: potential loss of earning capacity, loss of career and employment opportunities, loss of employee benefits, loss of promotional opportunities, humiliation and embarrassment, mental and emotional distress, and loss of everyday pleasures of everyday life.

82. Pursuant to the PWDCRA, Defendants are liable to Plaintiff for all damages allowed under state law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees, as well as punitive and/or exemplary damages so wrongfully incurred.

COUNT III
VIOLATION OF 42 U.S.C § 12101, et seq., TITLE I OF THE
AMERICANS WITH DISABILITIES ACT AS TO DEFENDANT
WARDEN PATRICK WARREN IN HIS OFFICIAL CAPACITY

83. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 82, as if fully set forth herein.

84. Title I of the Americans with Disabilities Act, 42 U.S.C. § 12112, prohibits discrimination against any qualified individual on the basis of disability in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

85. 42 U.S.C. § 12111(8) defines qualified individual to mean an individual who with or without reasonable accommodation can perform the essential functions of the employment position that such individual holds or desires.

86. At all relevant times, Plaintiff was a qualified individual within the meaning of 42 U.S.C. § 12111(8).

87. Plaintiff could perform his job duties with, or without, a reasonable accommodation.

88. Plaintiff's asthma and/or allergies when around dogs limited and/or were regarded as limiting, the substantial major life activities of performing manual tasks, breathing, working, and the operation of his respiratory system.

89. 42 U.S.C. § 12112(b) defines discrimination against a qualified individual on the basis of disability. The definition of discrimination includes the failure to reasonably accommodate a disabled individual, and includes the following:

- a. 42 U.S.C. § 12112(b)(3) includes in the definition of discrimination utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability.

- b. 42 U.S.C. § 12112(b)(5) includes in the definition of discrimination the failure to reasonably accommodate a qualified individual with a disability.
- c. 42 U.S.C. § 12112(b)(6) includes in the definition of discrimination the use of qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with a disability unless it is shown to be job related for the position in question and consistent with business necessity.

90. A facially discriminatory policy is direct evidence of disability discrimination.

91. The ADA also requires an individualized inquiry into each individual's specific situation and need for an accommodation.

92. Defendant violated the ADA when it discriminated against Plaintiff on the basis of his disability and failing to accommodate his reasonable requests for an accommodation and treating him more hostile following his request for an accommodation.

93. Defendant discriminated against Plaintiff by enforcing its policies regarding requested accommodations and what is an essential job function, which are in violation of the ADA.

94. Defendant Warden Patrick Warren at all times relevant to this cause of action has the final decision-making authority and enforcement authority to enact policies, procedures, regulations, or customs regarding, but not limited to, when, how, and who to give an accommodation to, and the final decision-making authority on the denial of a request for an accommodation and the basis for which Defendant MDOC makes such denial.

95. By ignoring ongoing discrimination and enforcing discriminatory policies against Plaintiff and other similarly-situated employees, Defendant Warden Patrick

Warren disregarded Plaintiff's basic rights under the United States government and the Americans with Disabilities Act.

96. Defendant's actions and policies in discriminating against Plaintiff on the basis of his disability and failing to accommodate Plaintiff were conducted with malice or reckless indifference to Plaintiff's federally protected rights.

97. As a direct and proximate result of Defendant's unlawful actions against Plaintiff as described herein, Plaintiff has been deprived of his federally protected rights.

WHEREFORE, Plaintiff prays for the following relief from this Honorable Court:

- a. A declaratory judgment that Defendant's policies, practices, and procedures in the past have prevented and continue to prevent, Plaintiff, along with other similarly situated employees from receiving a "reasonable accommodation" pursuant to the ADA;
- b. An injunction prohibiting Defendant's discriminatory policy of refusing to allow reasonable accommodations based on a discriminatory standard and requiring them to follow the ADA requirements;
- c. A declaration that Defendant's policies regarding accommodations and the essential job functions unlawfully violate Plaintiff's, and other similarly situated corrections officers, rights under the ADA, ADAAG Guidelines, and ADA Regulations.
- d. An award of interest, costs, and reasonable attorney fees in litigating this matter; and
- e. All other relief this Honorable Court deems just and proper.

COUNT IV
VIOLATION OF 29 U.S.C § 794, et seq., SECTION 504 OF THE
REHABILITATION ACT AS TO DEFENDANT MDOC AND STATE OF
MICHIGAN AS TO DEFENDANT MDOC AND STATE OF MICHIGAN

98. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 97, as if fully set forth herein.

99. The purpose of the Rehabilitation Act is to ensure that no “qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

100. The claims under the Rehabilitation Act are brought against Defendant MDOC as a department, agency, or instrumentality of Defendant State of Michigan.

101. Plaintiff is an “individual with a disability” within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(a)-(b).

102. The operations of Defendant MDOC are “programs or activities” within the meaning of the Rehabilitation Act.

103. Defendant MDOC receives “federal assistance” within the meaning of 29 U.S.C. § 794(a).

104. The DOJ regulation implementing the Rehabilitation Act clarifies the requirements for Federal financial recipients, including correctional facilities, stating: “ a recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program or activity. 28 C.F.R. § 42.511(a).

105. A reasonable accommodation includes, among others, making facilities usable by handicapped persons, and/or “job restructuring.” 28 C.F.R. § 42.511(b).

106. “No qualified handicapped person shall on the basis of handicap be subjected to discrimination under any program or activity receiving Federal financial assistance.” 28 C.F.R. § 42.510(a)(1).

107. Defendant MDOC is required to “make all decisions concerning employment under any program or activity receiving Federal financial assistance in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.” 28 C.F.R. § 42.510(a)(2).

108. Defendants discriminatorily impaired and denied Plaintiff’s ability to receive a reasonable accommodation and receive the benefits of Defendant’s disability accommodation program and excluded Plaintiff from the same program in violation of the Rehabilitation Act.

109. Defendant’s failure to provide Plaintiff with a reasonable accommodation in lieu of his disability and/or his perceived disability denied Plaintiff the Defendants’ services, benefits, activities, programs, or privileges as the access provided to non-disabled individuals.

110. On information and belief, this denial and failure to provide comparable access to Defendants’ services, benefits, activities, programs or privileges arose from Defendants’ facially discriminatory policies, practices, and enforcement of the same. These policies are ongoing and continue to this date.

111. Defendants have also violated the Rehabilitation Act by excluding Plaintiff from its accommodation program and/or proper non-discriminatory standards for granting an accommodation.

RASOR LAW FIRM, PLLC

112. As a proximate result of Defendants' violation of Plaintiff's rights under the Rehabilitation Act, Plaintiff has suffered, and continues to suffer, from discrimination, unequal treatment, exclusion from Defendants' programs, financial loss, loss of employment and promotional opportunities, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, including unnecessary disciplinary measures, and injury to his health.

113. Defendants' failure to comply with the Rehabilitation Act has resulted in harm to Plaintiff, and Defendants are liable to Plaintiff for these harms suffered.

114. Pursuant to Section 504 of the Rehabilitation Act, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants including but not limited to compensatory damages in whatever amount he is found to be entitled, exemplary damages commensurate with the wrong and Defendant's ability to pay, and an award of him fair and reasonable attorney fees, cost of litigation, and interest.

Respectfully Submitted,

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila
ANDREW J. LAURILA (P78880)
Attorney for Plaintiff
201 E. 4th Street
Royal Oak, MI 48067

Dated: July 12, 2018

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KENNETH MCKENZIE,

Plaintiff,

Case No.: 18-002451-CD
Hon.: MURIEL D. HUGHES

v

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for *Plaintiff*
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000/ Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

ADAM R. DE BEAR (P80242)
Assistant Attorney General
Attorney for Defendants
Michigan Dept. of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162
(517) 373-2060 – Fax
debeara@michigan.gov

RASOR LAW FIRM, PLLC

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Kenneth McKenzie, by and through his attorneys, THE RASOR LAW FIRM, PLLC, and hereby respectfully requests trial by jury in the above captioned matter.

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila
ANDREW J. LAURILA (P78880)
Attorney for Plaintiff
201 E. 4th Street
Royal Oak, MI 48067

Dated: July 12, 2018

PROOF OF SERVICE

The undersigned certified that a copy of the foregoing instrument was delivered to each of the attorneys of record and/or unrepresented and/or interested parties on **July 12, 2018**, at their respective addresses as disclosed in the pleadings on record in this matter by:

- US First Class Mail
- Hand Delivery
- Fed Ex
- Facsimile Transmission
- UPS
- Other: Efiling

/s/ Stephanie R. Moore
Stephanie R. Moore

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KENNETH McKENZIE,

Plaintiff,

Case No. 18-002451-CD

vs.

Hon. Muriel D. Hughes

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for *Plaintiff*
201 E. Fourth St.
Royal Oak, MI 48067
(248) 543-9000 / Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

ADAM R. DE BEAR (P80242)
KENDELL ASBENSON (P81747)
Assistant Attorneys General
Attorneys for *Defendants*
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162 / Fax: (517) 373-2060
debeara@michigan.gov
asbensonk1@michigan.gov

**ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY DISPOSITION AS
TO COUNTS III AND IV OF PLAINTIFF’S AMENDED COMPLAINT**

At a session of said court held in the
courthouse located in the City of Detroit,
County of Wayne, State of Michigan on
November 28, 2018 12/12/2018

This matter having come before the court on Defendant’s Motion for Summary
Disposition as to Counts III and IV of Plaintiff’s Amended Complaint; all parties having
been presented; the court having entertained oral argument, and otherwise being fully
advised in the premises;

IT IS HEREBY ORDERED that Defendant’s Motion for Summary Disposition as to

Counts III and IV of Plaintiff's Amended Complaint brought under MCR 2.116(C)4 is denied with prejudice for reasons stated on the record.

/s/ Muriel D. Hughes 12/12/2018
Honorable Muriel D. Hughes, Circuit Judge

Approved as to form:

/s/ Andrew J. Laurila
Andrew J. Laurila (P78880)
Attorney For Plaintiffs

/s/ Kendell Asbenson (w/ permission)
Kendell S. Asbenson (P81747)
Attorney for Defendant

Court of Appeals, State of Michigan

ORDER

Kenneth McKenzie v Department of Corrections

Docket No. 347061

LC No. 18-002451-CD

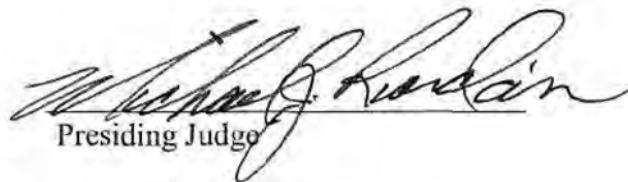
Michael J. Riordan
Presiding Judge

Christopher M. Murray

Thomas C. Cameron
Judges

The Court orders that the motion for immediate consideration is GRANTED.

It is further ordered that the motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

February 27, 2019
Date


Chief Clerk

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/20/2021 4:03:47 PM

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH MCKENZIE,
Plaintiff-Appellee,

FOR PUBLICATION
May 7, 2020
9:00 a.m.

v

DEPARTMENT OF CORRECTIONS, STATE OF
MICHIGAN, and MACOMB CORRECTIONAL
FACILITY WARDEN,

No. 347061
Wayne Circuit Court
LC No. 18-002451-CD

Defendants-Appellants,

and

RANDALL HAAS,

Defendant.

FATIMA OLDEN,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS, STATE OF
MICHIGAN, and MACOMB CORRECTIONAL
FACILITY WARDEN,

No. 347798
Wayne Circuit Court
LC No. 18-001424-CD

Defendants-Appellants.

Before: STEPHENS, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

In Docket No. 347061, defendants appeal as of right the trial court's denial of their motion for summary disposition premised upon MCR 2.116(C)(4). In Docket No. 347798, which this Court consolidated with Docket No. 347061, defendants appeal by leave granted the trial court's order denying their motion for summary disposition, also brought pursuant to MCR 2.116(C)(4). *Olden v Department of Corrections*, unpublished order of the Court of Appeals entered April 23, 2019 (Docket No. 347798). We affirm in both cases.

I. FACTS

The facts in both cases are similar and largely undisputed. Plaintiffs, Kenneth McKenzie and Fatima Olden, ("plaintiffs") are long-term employees of the Michigan Department of Corrections (MDOC) as corrections officers at the Macomb Correctional Facility ("the Facility"). In 2015, the Facility began a program where inmates trained dogs to become leader dogs for the blind. The program only took place in certain housing units in the facility. Plaintiffs were both assigned to one of those housing units and thus frequently had to come into contact with dogs. Plaintiffs alleged that they were allergic to dogs and would suffer allergic symptoms whenever they came into close contact with the dogs. Plaintiffs alleged that they informed their supervisors of the allergic reactions and then filed "Disability Accommodation Request and Medical Statements" with the MDOC, requesting that they be placed away from housing units that had dogs.

While the Facility warden allowed plaintiffs to briefly move to different housing units, plaintiffs were ultimately returned to the prior housing units with dogs. The MDOC denied plaintiffs' requests for accommodation and the Facility warden also refused to accommodate their claimed allergies by moving them to any other housing units or positions. Plaintiffs thus each filed a charge of disability discrimination with the Equal Employment Opportunity Commission (EEOC), after which they were allegedly subjected to retaliatory acts at the Facility. The EEOC found probable cause that the MDOC was in violation of the Americans with Disabilities Act (ADA) and proposed conciliation agreements between the MDOC and plaintiffs, but the MDOC refused the terms and plaintiffs' charges were transferred to the Department of Justice (DOJ). The DOJ determined that it would not pursue charges on behalf of either plaintiff and plaintiffs thereafter filed complaints against the Facility warden, the MDOC, and the state of Michigan. In their complaints, plaintiffs alleged violations of the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, retaliation in violation of the same Act, violation of Title I of the ADA, 42 USC § 12101, *et seq.*, by the defendant warden, and violation of section 504 of the Rehabilitation Act, 29 USC § 794, *et seq.*, by the state and the MDOC.

Defendants moved for summary disposition of plaintiffs' claims for violation of Title I of the ADA and violation of the Rehabilitation Act, asserting that plaintiffs' claims of violation of the ADA and violation of the Rehabilitation Act arise under federal law and remedies for those claims may be available in the federal courts. Defendants claimed that no Michigan statute provides the circuit court with jurisdiction over claims arising from the ADA or Rehabilitation Act and that, lacking statutory authority and because the courts lacked jurisdiction for any claim against the state for which there is a remedy available in federal courts, the circuit courts lacked subject matter jurisdiction over plaintiffs' federal claims. The trial courts denied the motions, opining that they had subject matter jurisdiction to hear those claims under the Michigan Constitution and the Revised Judicature Act. These appeals followed.

II. LAW GOVERNING JURISDICTION

On appeal, defendants assert that because the state retains sovereign immunity from suit in its own courts, waiver of that immunity can be achieved only through the Legislature's consent. They contend that while the Legislature has consented to the state being sued for certain things in the Court of Claims under the Court of Claims Act, it has not authorized the state to be sued in the Court of Claims or any other state court for federal Title I ADA or Rehabilitation Act claims. Defendants acknowledge that while states courts generally have concurrent jurisdiction with federal courts over federal claims, Michigan is without a court of competent jurisdiction to hear ADA and Rehabilitation Act claims. According to defendants, the trial court therefore lacked subject-matter jurisdiction over plaintiffs' federal claims and that summary disposition should thus have been granted in their favor with respect to plaintiffs' ADA and Rehabilitation Act claims. We disagree.

This Court reviews a motion for summary disposition brought pursuant to MCR 2.116(C)(4) de novo. *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 155; 756 NW2d 483 (2008). A motion pursuant to MCR 2.116(C)(4) tests the trial court's subject-matter jurisdiction. *Braun v Ann Arbor Charter Tp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). "When viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Weishuhn*, 279 Mich App at 155 (citation omitted). We review whether a trial court has subject-matter jurisdiction de novo as a question of law. *Bank v Michigan Ed Ass'n-NEA*, 315 Mich App 496, 499; 892 NW2d 1 (2016). This Court also reviews de novo "questions of statutory construction, with the fundamental goal of giving effect to the intent of the Legislature." *Cheboygan Sportsman Club v Cheboygan Co Prosecuting Attorney*, 307 Mich App 71, 75; 858 NW2d 751 (2014).

The singular issue for our resolution is whether the circuit courts had subject-matter jurisdiction over plaintiffs' ADA and Rehabilitation Act claims. "Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case." *Forest Hills Cooperative v Ann Arbor*, 305 Mich App 572, 617; 854 NW2d 172 (2014). Michigan's circuit courts are courts of general jurisdiction and derive their power from the Michigan Constitution. *Okrie v Michigan*, 306 Mich App 445, 467; 857 NW2d 254 (2014). Specifically, Const. 1963, art. 6, § 13 provides:

The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

The Revised Judicature Act (RJA) also provides that:

circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by

statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. [MCL 600.605]

Thus, a circuit court is presumed to have subject-matter jurisdiction over a civil action *unless* (1) Michigan’s Constitution or a statute expressly prohibits it from exercising jurisdiction or, (2) Michigan’s Constitution or a statute gives to another court exclusive jurisdiction over the subject matter of the suit. *Prime Time Intl Distrib, Inc v Dept of Treasury*, 322 Mich App 46, 52; 910 NW2d 683 (2017). “ ‘[W]here this Court must examine certain statutory language to determine whether the Legislature intended to deprive the circuit court of jurisdiction,’ this Court has explained, ‘[t]he language must leave no doubt that the Legislature intended to deprive the circuit court of jurisdiction of a particular subject matter.’ ” *Id.*, citation omitted.

There is no dispute that claims of ADA and Rehabilitation Act violations arise under federal law. With respect to claims sounding in federal law our Supreme Court has provided guidance concerning the circuit courts’ subject-matter jurisdiction:

It has long been established that, so long as Congress has not provided for exclusive federal-court jurisdiction, state courts may exercise subject-matter jurisdiction over federal-law claims whenever, by their own constitution, they are competent to take it. State courts possess sovereignty concurrent with that of the federal government, subject only to limitations imposed by the Supremacy Clause. Thus, state courts are presumptively competent to assume jurisdiction over a cause of action arising under federal law. If concurrent jurisdiction otherwise exists, subject-matter jurisdiction over a federal-law claim is governed by state law.

In determining whether our state courts enjoy concurrent jurisdiction over a claim brought under federal law, it is necessary to determine whether Congress intended to limit jurisdiction to the federal courts.

In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state courts enjoy concurrent jurisdiction. Congress, however, may confine jurisdiction to the federal courts either explicitly or implicitly. Thus, the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests. [*Office Planning Group, Inc v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 493-494; 697 NW2d 871 (2005), quotation marks and citations omitted]

Our inquiry, then, is first “whether Congress intended to limit to federal courts exclusive jurisdiction over such a dispute” and, second, “if not, whether state law allows our courts to exercise subject-matter jurisdiction over the action.” *Id.* at 494.

III. ADA CLAIMS

According to our Supreme Court, federal ADA claims could properly be brought in state courts because state courts enjoy concurrent jurisdiction over such claims. *Peden v City of Detroit*,

470 Mich 195, 201 n. 4; 680 NW2d 857 (2004), quoting *Gulf Offshore Co v Mobil Oil Corp*, 453 US 473, 478; 101 S Ct 2870; 69 L Ed 2d 784 (1981). *Peden* noted the same considerations set forth in *Office Planning Group, Inc*, 472 Mich at 493-494. *Peden* also noted that the ADA, at 42 USC § 12202 states:

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

By providing that a state is not immune from an action “in Federal *or State court* of competent jurisdiction . . .” Congress has expressly acknowledged that actions against the state for violation of the ADA could lie in state courts.

However, in *Bd of Trustees of Univ of Alabama v Garrett*, 531 US 356, 364; 121 S Ct 955, 962; 148 L Ed 2d 866 (2001), the United States Supreme Court was called upon to determine whether, in enacting 42 USC § 12202, “Congress acted within its constitutional authority by subjecting the States to suits in federal court for money damages under the ADA.” The Supreme Court held that it did not and that “to uphold the [ADA’s] application to the States would allow Congress to rewrite the Fourteenth Amendment law laid down by this Court . . .” *Id.* at 374. The Supreme Court also acknowledged that:

Our holding here that Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young*, 209 US 123; 28 S Ct 441, 52 L Ed 714 (1908). In addition, state laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress. [*Id.* at 374 n. 9]

Thus, while the Supreme Court determined that states’ sovereign immunity from suit could not be abrogated by 42 USC 12202, suits by private individuals for injunctive relief against individual state officials in their official capacities could still be pursued in state courts. See, *Ex parte Young*, 209 US 123; 28 S Ct 441; 52 L Ed 714 (1908). And, *Bd of Trustees of Univ of Alabama* held only that states’ sovereign immunity from suit for *money damages* could not be abrogated by 42 USC § 12202. Thus, 42 USC § 12202’s abrogation of sovereign immunity with respect to injunctive claims brought against state officials in their official capacities under the ADA is still sound.

Applying the test set forth in *Office Planning Group, Inc*, 472 Mich at 494, we find that Congress did not intend to give federal courts exclusive jurisdiction over plaintiffs’ ADA claims which were brought against the warden, a state official, in his official capacity under the ADA and

which seek declaratory and injunctive relief. Such claims are pursuable in state courts according to *Bd of Trustees of Univ of Alabama*, 531 US at 374 n. 9. Moreover, there is no explicit or implicit indication that Congress affirmatively divested state courts of their presumptively concurrent jurisdiction over such claims. Our next inquiry, then, under *Office Planning Group, Inc*, 472 Mich at 494 is whether state law allows our courts to exercise subject-matter jurisdiction over plaintiffs' ADA claims.

As previously indicated, Const. 1963, art. 6, § 13 provides that circuit courts “have original jurisdiction in all matters not prohibited by law.” Defendants argue, however, that pursuant to *Greenfield Const Co Inc v Michigan Dept of State Highways*, 402 Mich 172, 193; 261 NW2d 718 (1978), it has long been recognized that a state cannot be sued without its consent granted through a legislative enactment and, that because neither the Court of Claims or the circuit court is statutorily granted the jurisdiction to hear and decide federal claims against the state or its' actors, the ADA and Rehabilitation Act claims must be dismissed for lack of subject-matter jurisdiction. Indeed, Michigan courts have long recognized that the state, as sovereign, is immune from suit save as it consents to be sued, because the state created the courts and thus is not subject to them; any relinquishment of sovereign immunity must be strictly interpreted in favor of the sovereign. *Co Rd Ass'n of Michigan v Governor*, 287 Mich App 95, 118; 782 NW2d 784 (2010). “Essentially, the state can only waive its immunity and, consequently, consent to be sued through an act of the Legislature or through the constitution.” *Id.* at 119.

Relevant to the instant matter, the state has waived its immunity and subjected itself to the authority of courts via the Court of Claims Act, MCL 600.6401, *et seq.* The Court of Claims Act thus serves as one exception to the general jurisdiction of circuit courts when it is given exclusive jurisdiction.¹ The act provides, in relevant part, at MCL 600.6419(1):

Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. . . . Except as otherwise provided in this section, the court has the following power and jurisdiction:

(a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

Notably, MCL 600.6419(1)(a) vests the Court of Claims with exclusive jurisdiction to “hear and determine any claim or demand . . . against the state or any of its departments or officers.” Employing the word “any” in this phrase according to its plain and ordinary meaning (see, e.g., *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012), “any” signifies “every” and is used to indicate no restriction. See, Merriam-Webster’s Collegiate Dictionary (11th ed.).

¹ Because the jurisdiction of the Court of Claims is not constitutionally created, but is instead constitutionally permitted and derives its power from the Legislature in Michigan statutory law, the Court of Claims does not have extensive and inherent powers akin to those of a constitutional court of general jurisdiction. *Okrie*, 306 Mich App at 456; *Prime Time Intl Distrib*, 322 Mich App at 53, quotation marks omitted.

MCL 600.6419(1)(a) further provides that the exclusive jurisdiction applies “notwithstanding another law that confers jurisdiction of the case in the circuit court.” The word “notwithstanding” is defined as “despite; in spite of.” Black’s Law Dictionary, 11th ed. Thus, strictly construing the plain language in the statute relinquishing sovereign immunity from suit (*Greenfield Const Co Inc*, 402 Mich at 197), the exclusive jurisdiction of the Court of Claims applies to every claim against the state, its departments, and its officers, despite any other law that confers jurisdiction of the case to the circuit court.

However, we cannot ignore that prior to setting forth the above, the Court of Claims Act, at MCL 600.6419, *begins* by stating “Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims . . . is exclusive.” Thus, at the outset, the Court of Claims Act sets forth two exceptions to the statement which provides it with exclusive jurisdiction over actions against the state, its departments and officers: MCL 600.6421 and MCL 600.6440.

MCL 600.6421 provides, in relevant part:

(1) Nothing in this chapter eliminates or creates any right a party may have to a trial by jury, including any right that existed before November 12, 2013. Nothing in this chapter deprives the circuit, district, or probate court of jurisdiction to hear and determine a claim for which there is a right to a trial by jury as otherwise provided by law, including a claim against an individual employee of this state for which there is a right to a trial by jury as otherwise provided by law. Except as otherwise provided in this section, if a party has the right to a trial by jury and asserts that right as required by law, the claim may be heard and determined by a circuit, district, or probate court in the appropriate venue.

(2) For declaratory or equitable relief or a demand for extraordinary writ sought by a party within the jurisdiction of the court of claims described in section 6419(1) and arising out of the same transaction or series of transactions with a matter asserted for which a party has the right to a trial by jury under subsection (1), unless joined as provided in subsection (3), the court of claims shall retain exclusive jurisdiction over the matter of declaratory or equitable relief or a demand for extraordinary writ until a final judgment has been entered, and the matter asserted for which a party has the right to a trial by jury under subsection (1) shall be stayed until final judgment on the matter of declaratory or equitable relief or a demand for extraordinary writ.

Thus, the first exception dictates that the Court of Claims has jurisdiction over claims brought against the state, its departments, or its officers *except* where a party has the right to a trial by jury and asserts that right as required by law. In that case, “the claim may be heard and determined by a circuit, district, or probate court in the appropriate venue.” MCL 600.6421(1).

Plaintiffs’ ADA claims are brought under Title 1. Title 1 is provided for in subchapter 1 of the ADA, at 42 USC § 12112 as follows:

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a), the term “discriminate against a qualified individual on the basis of disability” includes--

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(3) utilizing standards, criteria, or methods of administration--

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant

This subchapter, like all of the subchapters in the ADA, contains its own remedies and enforcement provisions. 42 USC § 12117, setting forth the “powers, remedies and procedures” applicable to Title I states:

(a) The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

Plaintiffs do not claim that any referenced section in the above provides a right to a jury trial for a claim of violation of Title 1 of the ADA where injunctive and declaratory relief is requested. Plaintiffs also fail to direct this Court to any authority suggesting a right to a jury trial in these circumstances. Thus, unless the second exception set forth in the Court of Claims Act at MCL 600.6419 applies, their ADA claims would be subject to the exclusive jurisdiction of the Court of Claims.

MCL 600.6440, states:

No claimant may be permitted to file claim in said court against the state nor any department, commission, board, institution, arm or agency thereof who has an adequate remedy upon his claim in the federal courts, but it is not necessary in the complaint filed to allege that claimant has no such adequate remedy, but that fact may be put in issue by the answer or motion filed by the state or the department, commission, board, institution, arm or agency thereof.

A review of the plain statutory language requires an interpretation that if a claimant has an adequate remedy upon his claims in the federal court, he *cannot* file the claim in the Court of Claims. All parties essentially agree that the above interpretation is correct. However, defendants contend that the statute also necessarily dictates that if a claimant has an adequate remedy in the federal court he must file the claim *in the federal court*, whereas plaintiffs contend that the circuit court's concurrent jurisdiction applies. We agree with plaintiffs.

While MCL 600.6440 precludes the filing of a claim in the Court of Claims if an adequate remedy in the federal courts exist, it does not explicitly preclude the concurrent jurisdiction of the circuit courts over such claims. Significantly, the statute provides that “[n]o claimant may be permitted to file claim in *said* court . . .” (emphasis added). “Said” is defined as “aforementioned.” Merriam-Webster’s Collegiate Dictionary (11th ed.). Because the Court of Claims Act governs the Court of Claims, the aforementioned and thus “said” court referred to in MCL 600.6440 is the Court of Claims. As a result, MCL 600.6440 directs only that if an adequate remedy is available in the federal courts, the claims cannot be filed, specifically, in the Court of Claims. Defendants more expansive reading of this statute to then require that such actions are limited to the federal courts is incorrect. Divesting the Court of Claims of jurisdiction does not divest the circuit court of any jurisdiction it may already have. And, our Supreme Court has directed that state courts are presumed to have concurrent jurisdiction with federal courts over federal claims, with that presumption being rebutted *only* when “*Congress* intended to limit jurisdiction to the federal courts.” *Office Planning Group, Inc*, 472 Mich at 493 (emphasis added). “*Congress* . . . may confine jurisdiction to the federal courts either explicitly or implicitly” through “explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests.” *Office Planning Group, Inc*, 472 Mich at 493-494 (emphasis added). There has been no contention or showing that Congress intended to limit jurisdiction over the specific type of ADA claims asserted by plaintiffs to the federal courts. Thus, the presumption of concurrent jurisdiction over such claims stands, and plaintiffs’ Title 1 ADA claims against the state officer warden in his official capacity and seeking injunctive and declaratory relief may be heard in the circuit court. As a result, the trial courts properly denied defendants’ motions for summary disposition premised upon lack of subject-matter jurisdiction over plaintiffs’ ADA claims.

IV. REHABILITATION ACT CLAIMS

Defendants contend that the trial courts erred in denying their motions for summary disposition concerning plaintiffs' claims of violations of § 504 of the Rehabilitation Act, 29 USC § 794. Defendants, however, dedicate very little argument to plaintiffs' Rehabilitation Act claims. Assuming that defendants intend the same arguments concerning sovereign immunity to apply to plaintiffs' Rehabilitation Act claims, we note that the Supreme Court has directed that Congress may, in the exercise of its spending power, condition its grant of funds to the states upon their taking certain actions that Congress could not require them to take, and require that the acceptance of these funds be conditioned upon a constructive waiver of its sovereign immunity. *Coll Sav Bank v Florida Prepaid Postsecondary Ed Expense Bd*, 527 US 666, 686; 119 S Ct 2219; 144 L Ed 2d 605 (1999). Consistent with this holding and relevant to the instant matter, 42 USC § 2000d-7 states:

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

Thus, Congress has clearly and explicitly directed that a state does not enjoy sovereign immunity from suits for violation of section 504 of the Rehabilitation Act—claims that were asserted by plaintiffs.

We note that 42 USC § 2000d-7 states that states are not immune from “a suit in Federal court” for a violation of section 504 of the Rehabilitation Act. This may, at first blush, lead to a conclusion that claims alleging violations of that section of the Rehabilitation Act must be brought in a federal court. But,

the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause. Under this system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States. [*Burt v Titlow*, 571 US 12, 19; 134 S Ct 10; 187 L Ed 2d 348 (2013)]

Moreover, in cases “arising under federal law” “there is a deeply rooted presumption in favor of concurrent state court jurisdiction, rebuttable if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim.” *Mims v Arrow Fin Services, LLC*, 565 US 368, 378; 132 S Ct 740; 181 L Ed 2d 881 (2012) (internal quotation marks and citation omitted). And, “the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive.” *Id.* at 380, quoting *United States v Bank of New York & Trust Co*, 296 US 463, 479; 56 S Ct 343; 80 L Ed 331 (1936).

In *Mims*, the Supreme Court noted that the Telephone Consumer Protection Act, 47 USC § 227, permits a private person to seek redress for violations of the act or regulations “in an appropriate court of [a] State,” “if [such an action is] otherwise permitted by the laws or rules of court of [that] State.” *Id.* at 380, quoting 47 USC § 227(b)(3). The *Mims* Court determined that while the statute at issue provided state courts with jurisdiction, it did not do so *exclusively* through use of the word “only” or “exclusively” before “State court” in the statute. *Id.* Thus, the *Mims* Court opined that the original jurisdiction of federal courts over federal questions, set forth in 28 USC § 1331, still applied and that the state forum mentioned in 47 USC § 227(b)(3) was optional, but not mandatory. *Id.* at 381.

The same holds true here. Had Congress intended that plaintiffs’ specific Rehabilitation Act claims be brought *exclusively* in the federal court, it was well aware how to do so. For example, 47 USC § 227(g)(2) (Supp 2011) provides “exclusive jurisdiction over [such] actions” in “[t]he district courts of the United States.” See, *Mims*, 565 US at 380. And, “[s]ection 227(g)(2)’s exclusivity prescription reinforce[s] the conclusion that [47 USC § 227(b) (3)’s] silence . . . leaves the jurisdictional grant of § 1331 untouched. *Id.* at 380-381.

Here, 42 USC § 2000d-7 explicitly states that states are not immune from “a suit in Federal court” for a violation of section 504 of the Rehabilitation Act. That provision leaves intact the original jurisdiction of federal courts over federal questions set forth in 28 USC § 1331. When read in conjunction with the exception set forth in the Court of Claims Act at MCL 600.6440 (directing that no claim may be filed against the state, its departments, or employees in the Court of Claims when an adequate remedy upon his claim exists in the federal courts), the presumption of concurrent jurisdiction with the circuit courts is also left intact. And, since “state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States” *Burt*, 571 US at 19, the circuit court’s concurrent jurisdiction applies. The circuit courts thus did not err in denying defendants’ motions for summary disposition of plaintiffs’ Rehabilitation Act claims based on lack of subject-matter jurisdiction.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto

Stephens, P.J., did not participate because of her assignment to the Michigan Court of Claims.

REGISTER OF ACTIONS

[CASE No. 18-002451-CD](#)

PARTY INFORMATION

Defendant	Haas, Randall	Attorneys Adam Lee Spinelli Fracassi <i>Retained</i> (517) 335-3234(W)
		Adam R. De Bear <i>Retained</i> (517) 335-7573(W)
Defendant	Michigan Department of Corrections	Kendell Scott Asbenson <i>Retained</i> (517) 335-7659(W)
Defendant	State of Michigan	Kyla Barranco <i>Retained</i> (517) 335-7573(W)
Plaintiff	McKenzie, Kenneth	James B. Rasor <i>Retained</i> (248) 543-9000(W)
		Andrew John Laurila <i>Retained</i> (248) 543-9000(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

03/05/2018 **Complaint, Filed**
03/05/2018 **Service Review Scheduled**
03/05/2018 **Status Conference Scheduled**
03/05/2018 **[Case Filing and Jury Trial Fee - Paid](#)**
03/16/2018 **[Proof of Service, Filed](#)**
03/16/2018 **[Proof of Service, Filed](#)**
03/16/2018 **[Proof of Service, Filed](#)**
03/16/2018 **[Proof of Service, Filed](#)**
03/28/2018 **[Service of Complaint, filed](#)**
03/28/2018 **[Proof of Service, Filed](#)**
04/04/2018 **[Miscellaneous Motion, Filed](#)**
04/04/2018 **[Brief, Filed](#)**
04/04/2018 **[Motion for Summary Judgment/Dispo,Filed-WVD](#)**
04/04/2018 **[Proof of Service, Filed](#)**
04/04/2018 **[Answer to Complaint, Filed](#)**
04/04/2018 **[Brief, Filed](#)**
04/04/2018 **[Proof of Service, Filed](#)**
04/04/2018 **[Proof of Service, Filed](#)**
04/13/2018 **[Notice of Hearing, Filed](#)**
04/13/2018 **[Notice of Hearing, Filed](#)**
04/13/2018 **[Proof of Service, Filed](#)**
05/03/2018 **[Appearance of Attorney, Filed](#)**
05/03/2018 **[Proof of Service, Filed](#)**
05/03/2018 **[Appearance of Attorney, Filed](#)**
05/03/2018 **[Proof of Service, Filed](#)**
05/03/2018 **[Praecipe, Filed](#)** (Judicial Officer: Hughes, Muriel)
05/03/2018 **[Praecipe, Filed](#)** (Judicial Officer: Hughes, Muriel)
06/04/2018 **[Miscellaneous Pleadings, Filed](#)**
06/04/2018 **[Proof of Service, Filed](#)**
06/04/2018 **[Proof of Service, Filed](#)**
06/05/2018 **Status Conference** (8:00 AM) (Judicial Officer Hughes, Muriel)

06/04/2018 *Reset by Court to 06/05/2018*

Result: Reviewed by Court

06/05/2018 [Status Conference Scheduling Order, Signed and Filed](#)

06/13/2018 [Answer to Motion, Filed](#)

06/13/2018 [Proof of Service, Filed](#)

06/15/2018 [Answer to Motion, Filed](#)

06/15/2018 [Proof of Service, Filed](#)

06/15/2018 [Reply to Brief, Filed](#)

06/15/2018 [Proof of Service, Filed](#)

06/19/2018 [Exhibit, Filed](#)

06/19/2018 [Proof of Service, Filed](#)

06/21/2018 [Notice of Hearing, Filed](#)

06/21/2018 [Proof of Service, Filed](#)

06/25/2018 [Reply to Brief, Filed](#)

06/25/2018 [Proof of Service, Filed](#)

06/29/2018 [Answer to Motion, Filed](#)

06/29/2018 [Proof of Service, Filed](#)

07/10/2018 **Motion Hearing** (10:00 AM) (Judicial Officer Hughes, Muriel)

06/20/2018 Reset by Court to 07/10/2018

Result: Held

07/10/2018 **Motion Hearing** (10:00 AM) (Judicial Officer Hughes, Muriel)

06/20/2018 Reset by Court to 07/10/2018

Result: Held

07/10/2018 **Motion Denied, Order to Follow** (Judicial Officer: Hughes, Muriel)

07/10/2018 **Motion Granted, Order to Follow** (Judicial Officer: Hughes, Muriel)

07/11/2018 [Proof of Service, Filed](#)

07/12/2018 [Order Granting in Part/Denying in Part, Signed and Filed](#)

07/12/2018 [Amended Complaint, Filed](#)

07/12/2018 [Proof of Service, Filed](#)

07/26/2018 [Summons Not Served, Filed](#)

07/26/2018 [Proof of Service, Filed](#)

08/02/2018 [Motion for Summary Judgment/Disposition, Filed](#)

08/02/2018 [Proof of Service, Filed](#)

08/02/2018 [Answer to Affirmative Defenses, Filed](#)

08/02/2018 [Proof of Service, Filed](#)

08/02/2018 [Notice of Hearing, Filed](#)

08/02/2018 [Proof of Service, Filed](#)

08/16/2018 [Answer to Motion, Filed](#)

08/16/2018 [Proof of Service, Filed](#)

08/27/2018 [Witness List, Filed](#)

08/27/2018 [Proof of Service, Filed](#)

08/27/2018 [Witness List, Filed](#)

08/27/2018 [Proof of Service, Filed](#)

08/28/2018 [Miscellaneous Pleadings, Filed](#)

08/28/2018 [Miscellaneous Pleadings, Filed](#)

08/28/2018 [Miscellaneous Pleadings, Filed](#)

08/28/2018 [Proof of Service, Filed](#)

08/28/2018 [Proof of Service, Filed](#)

08/28/2018 [Proof of Service, Filed](#)

09/07/2018 [Praecipe, Filed](#) (Judicial Officer: Hughes, Muriel)

09/19/2018 [Proof of Service, Filed](#)

09/19/2018 [Proof of Service, Filed](#)

09/20/2018 [Proof of Service, Filed](#)

09/20/2018 [Proof of Service, Filed](#)

09/21/2018 [Order for Miscellaneous Action, Signed and Filed](#)

09/21/2018 [Proof of Service, Filed](#)

09/25/2018 [Miscellaneous Pleadings, Filed](#)

09/25/2018 [Proof of Service, Filed](#)

10/04/2018 [Notice of Hearing, Filed](#)

10/04/2018 [Proof of Service, Filed](#)

11/05/2018 [Proof of Service, Filed](#)

11/05/2018 [Reply to Brief, Filed](#)

11/05/2018 [Proof of Service, Filed](#)

11/07/2018 [Miscellaneous Motion, Filed](#)

11/07/2018 [Proof of Service, Filed](#)

11/13/2018 [Notice of Hearing, Filed](#)

11/13/2018 [Proof of Service, Filed](#)

11/16/2018 [Praecipe, Filed](#) (Judicial Officer: Hughes, Muriel)

11/16/2018 [Notice of Hearing, Filed](#)
 11/16/2018 [Proof of Service, Filed](#)
 11/28/2018 **Motion Hearing** (11:00 AM) (Judicial Officer Hughes, Muriel)
 10/18/2018 *Reset by Court to 11/13/2018*
 11/13/2018 *Reset by Court to 11/15/2018*
 11/15/2018 *Reset by Court to 11/28/2018*
 Result: Held
 11/28/2018 **Motion Denied, Order to Follow** (Judicial Officer: Hughes, Muriel)
 12/12/2018 [Order Denying Motion, Signed and Filed](#)
 12/12/2018 [Proof of Service, Filed](#)
 12/14/2018 **Case Evaluation - Employment**
 12/14/2018 **Motion Hearing** (8:30 AM) (Judicial Officer Hughes, Muriel)
 Result: Held
 12/14/2018 **Motion Granted, Order to Follow** (Judicial Officer: Hughes, Muriel)
 12/14/2018 [Order Adjourning Settlement Conference, Signed and Filed](#)
 12/14/2018 [Proof of Service, Filed](#)
 01/02/2019 [Claim of Appeal, Filed](#)
 01/02/2019 [Proof of Service, Filed](#)
 02/12/2019 [Closed/Final - Ord for Stay of Proceedings, Signed and Filed](#)
 02/12/2019 [Proof of Service, Filed](#)
 02/20/2019 **CANCELED Settlement Conference** (8:30 AM) (Judicial Officer Hughes, Muriel)
 Case Disposed/Order Previously Entered
 01/30/2019 *Reset by Court to 02/20/2019*
 04/11/2019 [Transcript, Filed](#)
 04/11/2019 [Transcript, Filed](#)
 05/07/2020 [Higher Court Order/Decision Received by Circuit Court](#)
 06/17/2020 [Ord to Lift Stay of Proceedings \(Reopened\), Signed and Filed](#)
 07/08/2020 [Proof of Service, Filed](#)
 07/09/2020 [Order Adjourning Settlement Conference, Signed and Filed](#)
 07/20/2020 [Proof of Service, Filed](#)
 07/20/2020 [Appellant/Appellee Brief, Filed](#)
 08/17/2020 **Settlement Conference** (11:00 AM) (Judicial Officer Hughes, Muriel)
 07/08/2020 *Reset by Court to 08/17/2020*
 Result: Held
 08/17/2020 **Closed - Mot for Stay of Proceedngs Grantd, Order to Follow** (Judicial Officer: Hughes, Muriel)
 08/17/2020 [Final - Order for Stay of Proceedings, Signed and Filed](#)
 08/17/2020 [Proof of Service, Filed](#)

FINANCIAL INFORMATION

Plaintiff McKenzie, Kenneth			
	Total Financial Assessment		345.00
	Total Payments and Credits		345.00
	Balance Due as of 12/16/2021		0.00
03/05/2018	Transaction Assessment		260.00
03/05/2018	eFiling	Receipt # 2018-16160	(260.00)
04/04/2018	Transaction Assessment		20.00
04/04/2018	eFiling	Receipt # 2018-26546	(20.00)
08/02/2018	Transaction Assessment		20.00
08/02/2018	eFiling	Receipt # 2018-61195	(20.00)
11/07/2018	Transaction Assessment		20.00
11/07/2018	eFiling	Receipt # 2018-92857	(20.00)
01/03/2019	Transaction Assessment		25.00
01/03/2019	eFiling	Receipt # 2019-00496	(25.00)

COA 347061
MSC 161690

KENNETH MCKENZIE V DEPARTMENT OF CORRECTIONS

Lower Court/Tribunal

WAYNE CIRCUIT COURT

Judge(s)

HUGHES MURIEL D

Docket

Case Documents

Case Information



Case Header

Case Number

COA #347061

MSC #161690

Case Status

MSC Pending on Application

COA Case Concluded; File Open

Consolidated Appeals

COA #347798 Case Concluded; File Open

Published Case Citation(s)

Parties & Attorneys to the Case Court of Appeals

1

MCKENZIE KENNETH

Plaintiff - Appellee

Attorney(s)

LAURILA ANDREW J

#78880, Retained

2

CORRECTIONS DEPARTMENT OF

Defendant - Appellant

Attorney(s)

ASBENSON KENDELL S

#81747, Attorney General

3

STATE OF MICHIGAN

Defendant - Appellant

Attorney(s)

Same

4

MACOMB CORRECTIONAL FACILITY WARDEN

Defendant - Appellant

Attorney(s)

Same

5

HAAS RANDALL

Defendant

Attorney(s)

Same

Parties & Attorneys to the Case – Supreme Court

1

MCKENZIE KENNETH

Plaintiff

Attorney(s)

Andrew John Laurila

#78880

2

CORRECTIONS DEPARTMENT OF

Defendant

Attorney(s)

B. Eric Restuccia, Dep Sol Gen

#49550

3

STATE OF MICHIGAN

Defendant

4

MACOMB CORRECTIONAL FACILITY WARDEN

Defendant

5

HAAS RANDALL

Defendant

SHOW 1 MORE PARTIES +

COLLAPSE ALL

EXPAND ALL

01/02/2019	1	Claim of Appeal- Civil	+
12/12/2018	2	Order Appealed From	+
01/02/2019	3	Transcript Requested By Atty Or Party	+
01/08/2019	4	Invol Dismissal Warning- No Steno Cert	+
01/09/2019	5	Transcript Requested By Atty Or Party	+
02/01/2019	7	Docketing Statement MCR 7.204H	+

02/06/2019	6 Telephone Contact	+
02/07/2019	8 Defective Filing Letter	+
02/07/2019	9 Defect Cured	+
02/07/2019	10 Proof of Service - Generic	+
02/12/2019	11 Telephone Contact	+
02/12/2019	12 Steno Certificate - Tr Request Received	+
02/12/2019	13 Other	+
02/13/2019	14 Motion: Dismiss	+
02/13/2019	15 Telephone Contact	+
02/20/2019	16 Submitted on Special Motion Docket	+
02/20/2019	17 Answer - Motion	+
02/27/2019	18 Order: Dismissal - Motion - Deny	+
02/27/2019	19 Verbal Order to Parties-Phone	+
03/26/2019	20 Notice Of Filing Transcript	+
03/29/2019	22 Transcript Filed By Party	+
04/04/2019	23 Email Contact	+
04/10/2019	24 Notice Of Filing Transcript	+

04/23/2019	26 Order: Consolidate - Grant	+
05/23/2019	27 Stipulation: Extend Time - AT Brief	+
05/24/2019	28 Correspondence Sent	+
06/17/2019	29 Brief: Appellant	+
07/23/2019	30 Noticed	+
07/26/2019	31 Electronic Record Filed	+
02/05/2020	35 Motion: Oral Argument on Case Call	+
02/06/2020	36 Submitted on Motion Docket Affecting Call	+
02/14/2020	37 Order: Oral Argument - Grant	+
02/14/2020	38 Verbal Order to Parties-Phone	+
02/14/2020	39 Case Call Update For Panel	+
03/03/2020	34 Submitted on Case Call	+
03/03/2020	40 Oral Argument Audio	+
05/07/2020	43 Opinion - Per Curiam - Published	+
07/20/2020	46 Other	+
07/21/2020	44 Application for Leave to SCt	+
07/21/2020	45 Supreme Court: SCt Case Caption	+

08/17/2020	47 Other	+
09/08/2020	48 Supreme Court: Reply - SCt Application/Complain	+
09/08/2020	49 Supreme Court: Answer - SCt Application/Complain	+
04/27/2021	50 Supreme Court Order: Order Directing Response	+
04/30/2021	51 Michigan Appeals Reports Publication	+
05/24/2021	52 Supreme Court: Filing per SC Order	+
05/25/2021	53 Supreme Court: Filing per SC Order	+
09/29/2021	54 Supreme Court Order: MOAA -Oral Argument on Lv Appl	+

Stephenson, George E. (MDOC)

From: Stephenson, George E. (MDOC)
Sent: Tuesday, March 10, 2015 11:40 AM
To: Haas, Randall W. (MDOC)
Subject: RE: Leader Dog Prison Puppies

Thanks

From: Frick, Heather (MDOC) **On Behalf Of** Haas, Randall W. (MDOC)
Sent: Tuesday, March 10, 2015 11:28 AM
To: Steward, Darrell (MDOC); Stephenson, George E. (MDOC)
Subject: FW: Leader Dog Prison Puppies

FYI

From: Finco, Thomas (MDOC)
Sent: Monday, March 09, 2015 7:29 AM
To: Haas, Randall W. (MDOC)
Cc: Curtis, Bruce (MDOC); Finco, Thomas (MDOC)
Subject: RE: Leader Dog Prison Puppies

approved

Thomas G. Finco, Deputy Director
Correctional Facilities Administration
Michigan Department of Corrections
Phone: 517-373-0287
Fax: 517-373-3882



From: Haas, Randall W. (MDOC)
Sent: Wednesday, March 04, 2015 8:32 AM
To: Finco, Thomas (MDOC)
Cc: Curtis, Bruce (MDOC)
Subject: Re: Leader Dog Prison Puppies

It is kinda like you going back to being a post commander....short learning curve!

Sent from my iPhone

On Mar 4, 2015, at 8:16 AM, "Finco, Thomas (MDOC)" <FincoT@michigan.gov> wrote:

Shouldn't he give himself about six months to get his feet on the ground

Sent from my iPhone

On Mar 4, 2015, at 8:15 AM, Curtis, Bruce (MDOC) <CurtisB4@michigan.gov> wrote:

Would you give permission for Warden Haas to start a leader dog program at Macomb like the one at JCF? I don't have a problem with it as long as staff time is not diverted away from custody work. The program is very popular with the prisoner body as well as staff.

Sent from my iPad

Begin forwarded message:

From: "Haas, Randall W. (MDOC)" <HaasR2@michigan.gov>
Date: March 4, 2015 at 7:12:00 AM EST
To: "Curtis, Bruce (MDOC)" <CurtisB4@michigan.gov>
Subject: FW: Leader Dog Prison Puppies

Good Morning,

Have you had a chance to consider this request?

Thanks

From: Haas, Randall W. (MDOC)
Sent: Friday, February 27, 2015 7:12 AM
To: Curtis, Bruce (MDOC)
Subject: FW: Leader Dog Prison Puppies

Good Morning,

This program is a success at JCF. It is also currently at AMF and URF.

With your approval, I would like to begin the program at MRF.

Thanks for your support.

From: Melissa Spooner, LVT [mailto:Melissa.Spooner@LeaderDog.Org]
Sent: Tuesday, February 17, 2015 12:23 PM
To: Haas, Randall W. (MDOC)
Subject: Leader Dog Prison Puppies

Hello Warden Haase,

My name is Melissa and I am the new Coordinator of Prison Puppies at Leader Dogs for the Blind. I've spoken with Deb Donnelly, Sue Daniels and Brent Rohrig and they all have let me know that you have re-located to the Macomb Correctional Facility. I wanted to open our line of communication and touch base with you. From what I have heard you are interested in starting the Prison Puppies program at Macomb, which is very exciting (I grew up in Clinton Twp. and now live in Sterling Heights)! After you get settled in I would love the opportunity to come for a tour of your facility and meet with you and your staff. Please let me know your availability.

I look forward to hearing from you!
Melissa Spooner, LVT, VTS (Behavior), BS, KPA-CTP

Coordinator of Prison Puppies
Leader Dogs for the Blind
1039 S. Rochester Rd. • Rochester Hills, MI 48307-3115
Direct (248) 218-6686
Toll Free (888) 777-5332

Visit us online at leaderdog.org or 'like' us on [Facebook](https://www.facebook.com/leaderdog)
*Empowering people who are blind or visually impaired with lifelong skills for
independent travel through
quality Leader Dogs, highly effective client instruction and innovative services.*



Disclaimer: This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The recipient should check this email and any attachments for the presence of viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

DISABILITY ACCOMMODATION REQUEST AND MEDICAL STATEMENT

SECTION I - FOR COMPLETION BY EMPLOYEE. Please fully answer each item on the front of this form, in accordance with the attached instructions. Then provide the form, together with a copy of your position description, to your medical professional to complete the back of the form. Return the completed form to your departmental Accommodation Coordinator or other designated official. The information you submit will be treated as confidential to the extent permitted by law. Please note that your request cannot be processed unless both sides of this form are completed. For further information, refer to Civil Service Regulation 1.04, "Reasonable Accommodation."

1. Name FATIMA OLSEN	2. Employee's Identification Number [REDACTED]	3. Department/Agency DEPT. OF CORRECTIONS
4. Working Title Corrections Officer	5. Civil Service Classification E-9	6. Bargaining Unit (if any) Secu Local 526 m
7. Work Address (home address if on leave) 34625 26 mile RD New Haven MI 48048	8. Telephone Numbers EXT 171 Work (586) 749-4900 Home [REDACTED]	
9. Describe your current job duties requiring an accommodation because of a disability. (To facilitate the timely consideration of your request, please attach a copy of your position description when submitting this form. If you do not have a copy of your position description, please contact your human resources office or accommodation coordinator for one.) (See attached copy)		
10. My disability is (Check as appropriate.) <input type="checkbox"/> Mental <input checked="" type="checkbox"/> Physical <input type="checkbox"/> Both		
11. Describe the functional limitations caused by your disability for which you are requesting an accommodation. Use additional pages, if necessary. (Attach any additional medical documentation.) I am unable to be in the same location with animals (Dogs) without suffering Itchy, watery eyes and severe chest and nasal congestion. The symptoms make me feel fatigued and as if I have the flu. I have a hard time breathing, when making unit rounds in the presence of dogs.		
12. Describe any accommodations that you believe would minimize or eliminate the functional limitations listed above. Include any available information relating to cost, source, name of device, etc. The accommodations I believe would eliminate my limitation would be to be placed away from the animals on my worksite where I will not have any direct contact. so that my symptoms can not occur causing a physical hardship while trying to work.		
13. Date Submitted	14. Name and phone number of Immediate Supervisor	15. Employee's Signature Fatima Olsen

RECEIVED
 15 AUG 14 2011
 HR PERSONNEL UNIT

SECTION II - FOR COMPLETION BY MEDICAL PROVIDER. Please fully answer all applicable parts, based on your medical knowledge, experience, and examination of the patient. The employee should provide you with a copy of their position description. The following sections of the position description should be referenced when completing this form: job duties, physical effort, and essential functions. Please attach additional sheets if more space is needed. When completed, please sign and return the form to the patient so that he or she may submit it to their employer.

<p>16. Health Care Provider's Name and Business Address</p> <p>DR PAULEENA SINGH 6405 Telegraph Rd Bloomfield Hills MI 48301</p>	<p>17. Telephone Number</p> <p>1248 792 3690</p>
--	--

18. Does this employee have a physical or mental impairment? Yes No. (If yes, state the type of impairment.)

Chronic Allergy to dogs

19. List each major life activity limited by the impairment and describe how the employee is restricted due to the condition, as compared to an average person.

watery itchy eyes, nasal congestion, difficulty breathing

20. What is the duration or expected duration of the employee's impairment?

Lifetime

21. Can the employee perform all job duties listed in the job description? Yes No. (If no, state which job functions cannot be performed and why.)

Cannot be exposed to dog dander in the event she gets an anaphylactic reaction

22. Describe any reasonable accommodations that would allow the employee to perform the job functions listed above. If medical leave is one of the possible accommodations, please provide an estimated duration for the leave.

Removal from sites with dogs because of dog dander

23. Would performing any job function listed in the job description result in a direct safety or health threat to the employee or other people (coworkers, the general public, etc.)? Yes No. (If yes, state which job functions would pose a threat, what that threat could be, and any reasonable accommodation that would eliminate or reduce the threat to an acceptable level.)

Exposure to dog dander.

<p>24. Medical Provider's Signature</p> <p><i>PSJ</i></p>	<p>25. Date</p> <p>8/13/15</p>
---	--------------------------------



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

September 3, 2015

Ms. Fatima Olden
[REDACTED]

Dear Ms. Olden:

This letter is in response to the ADA request you submitted on August 14, 2015. Being able to work all positions and all shifts is an essential function of a Corrections Officer position, and due to that, we are unable to accommodate you at Macomb Correctional Facility. However, as an accommodation, the Department is able to offer you a position as a Corrections Officer at DRC where you will not have the possibility of working around dogs at this time.

Please select one of the options below:

- Yes, I accept a transfer to DRC
- No, I decline a transfer to DRC

Signature

Date

Please sign, date, and return this letter to the Human Resources Office no later than September 14, 2015. If you accept the transfer, the effective date of the transfer will be October 11, 2015. If you decline the transfer, you will be placed on a medical leave as you are unable to perform the essential functions of the job at Macomb Correctional Facility.

If you have any questions, please contact me at (586) 749-4900 extension 170.

Sincerely,

Elaine D. Davis
Human Resources Officer
Macomb Correctional Facility

RESPONSE TO DISABILITY ACCOMMODATION REQUEST

This form must be completed after an employee has filed a Disability Accommodation Request Form. The departmental Accommodation Coordinator (or other designated official) must complete Part A and send a copy to the requesting employee. (Civil Service Regulation 1.04 requires the Accommodation Coordinator to issue a written response within eight weeks after receiving a completed Disability Accommodation Request Form from an employee.)

PART A: ACCOMMODATION COORDINATOR'S RESPONSE TO REQUEST FOR ACCOMMODATION

1. Accommodation Coordinator's Name Elaine D. Davis	2. Coordinator's Title Human Resources Officer
3. Department/Agency 47/41	4. Date Request Received August 14, 2015
5. Employee's Name Olden, Fatima	6. Employee's Identification Number [REDACTED]

7. Final Disposition of Request (Check one box and then describe or explain in detail.)

Employee's Request APPROVED (Describe the disability and the final, approved accommodation[s].)

Employee's Request DENIED (Explain the reason[s] for denying the requested accommodation[s].)

The request under the ADA is denied as we are not able to accommodate Ms. Olden's restrictions in her current position at Macomb Correctional Facility. However, as an accommodation, the Department is able to offer her a position as a Corrections Officer at DRC where she will not have the possibility of working around dogs at this time. Please see the attached letter.

RECEIVED
15 SEP 15 11:12 AM
HUMAN RESOURCE OFFICE

Accommodation Coordinator's Signature <i>Elaine D. Davis</i>	Date September 3, 2015
---	---------------------------

PART B: EMPLOYEE'S ACKNOWLEDGMENT (When completed, return to Accommodation Coordinator.)

I acknowledge receipt of this answer and I AGREE DISAGREE (If you disagree, please explain and attach any necessary documentation.)

(See Attachment)

Employee's Signature <i>Fatima Olden</i>	Date <i>Sept 8, 2015</i>
---	-----------------------------

RECEIVED by MSC 12/20/2021 4:03:47 PM

State of Michigan
Civil Service Commission
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections/41
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer E-9	10. Division Macomb Correctional Facility
5. Working Title of Position (What the agency titles the position) Corrections Officer	11. Section Custody
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor 11	12. Unit
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor 12	13. Work Location (City and Address)/Hours of Work 34625 26 Mile Rd, New Haven, MI 48048
14. General Summary of Function/Purpose of Position Corrections Officer(s) will oversee and participate in the custody, security, and treatment of prisoners. Duties include observation of prisoner activities, count of prisoners several times per shift, searching of prisoners, employees, Housing Units and other structures. Will attempt to obtain prisoner compliance with facility and departmental policy and procedures. Will be expected to respond quickly to calls for assistance in other areas of the prison as directed by control center or shift supervisor, observe and appropriately respond to critical incidents, including the writing of applicable reports. Must be able to communicate effectively. Other duties as assigned.	
For Civil Service Use Only	

RECEIVED by MSC 12/20/2021 4:03:47 PM

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.
List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 65

Observe prisoners activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of prisoners, employees, or visitors.

Individual tasks related to the duty.

Keep prisoners moving and prevent loitering in yard or building entrances during times of mass movement.
Remain alert and aware of prisoner activities and behaviors.
Conduct searches of prisoners, structures and areas.
Attempt to gain compliance with facility rules thru the use of effective communication, summary actions and disciplinary misconduct reports.

Duty 2

General Summary of Duty 2 % of Time 15

Count prisoners on jurisdiction several times during shift.

Individual tasks related to the duty.

Complete formal counts as required.
Account for prisoner's whereabouts several times per shift when prisoners are under supervision.

Duty 3

General Summary of Duty 3 % of Time 5

Respond quickly to critical incidents as directed

Individual tasks related to the duty.

Observe and appropriately respond to such critical incidents as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the security of the facility.

Respond quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor.

Assist in controlling disturbances and isolating instigators.

Appropriate response may include use of firearms.

Prepare written reports as indicated.

Duty 4

General Summary of Duty 4 % of Time 15

Other duties as assigned.

Individual tasks related to the duty.

Various duties are assigned according to work assignment.

May be required to transport prisoners via passenger vehicle, control entry and exit from the facility, identify employees, visitors and law enforcement when assigned to front or sallyport gate.

May supervise prisoner work crews, escort prisoners to various areas within the institution.

<u>Duty 5</u> General Summary of Duty 5 % of Time _____	
Individual tasks related to the duty. •	
<u>Duty 6</u> General Summary of Duty 6 % of Time _____	
Individual tasks related to the duty. •	

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

Enforcing of facility rules and regulations- decide how compliance is best gained. Affects prisoner freedom of movement thru institution and good order of facility.

Authorize prisoner movement- Send prisoners to call-outs and details-check if on top lock or LOP sanction-check passes etc.-Determine authenticity of passes. Affects prisoner movement and good order of facility.

Determine actions to be taken when dealing with critical incidents, amount of force to be used to control certain situations. Affects safety and security of fellow staff and institution.

17. Describe the types of decisions that require your supervisor's review.

Cell moves
 Reconciliation Sheets
 Authorization to pass out certain equipment
 Authorization to enter restricted area
 Use of force if time and circumstances permit.

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

May include performance of strenuous tasks requiring muscular strength and coordination, and cardiovascular endurance.
 Ability to work in environment with various degrees of discomfort. Ability to wear and operate respiratory protection devices.
 Walking, standing for extended periods, sitting, stooping, stair climbing and reaching.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

<input type="checkbox"/> Complete and sign service ratings.	<input type="checkbox"/> Assign work.
<input type="checkbox"/> Provide formal written counseling.	<input type="checkbox"/> Approve work.
<input type="checkbox"/> Approve leave requests.	<input type="checkbox"/> Review work.
<input type="checkbox"/> Approve time and attendance.	<input type="checkbox"/> Provide guidance on work methods.
<input type="checkbox"/> Orally reprimand.	<input type="checkbox"/> Train employees in the work.

21. I certify that the above answers are my own and are accurate and complete.

Signature Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

Yes, I agree.

23. What are the essential duties of this position?

Corrections Officer(s) will oversee and participate in the custody, security, and evaluation of prisoners.

Duties include observation of prisoner activities, count of prisoners several times per shift, searching of prisoners, employees, Housing Units and other structures. Will attempt to obtain prisoner compliance with facility and departmental policy and procedures. Will be expected to respond quickly to calls for assistance in other areas of the prisoner as directed by control center or shift supervisor, observe and appropriately respond to critical incidents, including the writing of applicable reports. Must be able to communicate effectively. Other duties as assigned.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

Completion of 15 semester (23 term) credits in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.)

OR

Possession of 30 semester (46 term) credits leading toward a degree in any major. (This option is not available after date of hire.)

<p>25. What is the function of the work area and how does this position fit into that function?</p>
<p>26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.</p>
<p>EDUCATION: Completion of 15 semester (23 term) credits in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.) OR Possession of 30 semester (46 term) credits leading toward a degree in any major. (This option is not available after date of hire.)</p>
<p>EXPERIENCE: 1 year experience at CO E-8.</p>
<p>KNOWLEDGE, SKILLS, AND ABILITIES: Knowledge of Departmental policies, rules, regulations and procedures. Knowledge of security procedures and techniques. Ability to read, learn and apply facility and departmental policies, procedures, rules, regulations and Employee Handbook. Ability to maintain composure during stressful situations. Ability to relate to prisoners and gain their respect and confidence. Ability to successfully complete in-service education and training programs.</p>
<p>CERTIFICATES, LICENSES, REGISTRATIONS: None.</p>
<p><i>NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.</i></p>
<p>27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.</p>
<p>_____</p> <p>Supervisor's Signature</p>
<p>_____</p> <p>Date</p>

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

MICHIGAN DEPARTMENT OF CIVIL SERVICE
JOB SPECIFICATION

CORRECTIONS OFFICER

JOB DESCRIPTION

Employees in this job oversee and participate in the custody, security, and treatment of prisoners in correctional facilities including major institutions, camps, and correction centers.

There are two classification levels in this job.

Position Code Title – Corrections Officer-E

Corrections Officer 8

This is the entry level. At the entry level, employees are initially assigned to the corrections officer training academy, where they are required to successfully complete the approved training program designed to provide the knowledge and skills required to function as a corrections officer. Upon graduation from the training academy, the officer will complete the probationary period at his/her assigned correctional facility. The employee at this classification functions in one of two capacities; (1) overseeing and participating in the custody, security, and treatment of prisoners while learning and developing the interpersonal skills required to perform a range of corrections officer assignments; or, (2) performing a limited range of corrections officer assignments involving limited contact or interaction with prisoners.

Corrections Officer E9

This is the experienced level. At the experienced level, the employee oversees and participates in the custody, security, and treatment of prisoners in assignments, which involve substantial face-to-face contact with prisoners. The employee uses independent judgment in making decisions requiring interpretation and application of departmental guidelines to specific situations.

NOTE: Employees who perform the limited range of corrections officer assignments do not progress beyond the 8-level. Employees learning a full range of Corrections Officer assignments generally progress to the E9-level based on satisfactory performance and possession of the required experience.

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

CORRECTIONS OFFICER

PAGE NO. 2

Corrections 8 (Limited range of assignments)

On a post assignment:

Observes prisoners' activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of prisoners, employees, or visitors.

Responds quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor. Assists in controlling disturbances and isolating instigators.

Observes and appropriately responds to such "critical incidents" as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the security of the facility and prepares written reports. Appropriate response may require the use of firearms.

Prepares written records and reports related to the work.

Performs related work appropriate to the classification level as assigned.

Corrections Officer 8 (Full range of assignments) and E9

Observes prisoners' activities to detect unusual or prohibited behavior, which might be a threat to the security of the facility or the safety of employees, visitors, or other prisoners.

Counts prisoners under his/her jurisdiction several times during the shift and transmits count totals to the control officer.

Conducts thorough searches of prisoners, visitors, employees, mail, packages, cellblocks, and other structures for such prohibited items as critical tools, weapons, drugs, or other contraband.

Keeps prisoners moving and prevents loitering in yards or building entrances during periods of mass movement.

Attempts to obtain prisoners' compliance with facility rules and regulations. Writes Disciplinary Actions (tickets) on prisoners for rule's infractions.

Responds quickly to calls for assistance in other areas of the prison as directed by the control center or shift supervisor. Assists in controlling disturbances and isolating instigators.

Attempts to modify prisoner attitudes and behaviors through one-to-one or group interaction.

Observes and appropriately responds to such "critical incidents" as assaults on employees or prisoners, prisoner disturbances, or other situations threatening to the

CORRECTIONS OFFICER

PAGE No. 3

security of the facility and prepares written reports. Appropriate response may include use of firearms.

Transports prisoners via passenger vehicles ranging from busses to automobiles, to various locations outside the facility such as courts, medical centers, or other correctional facilities, ensuring that all security procedures are followed.

Works with resident unit managers and assistant resident unit supervisors, in such areas as determination of prisoner security classifications and parole eligibility, disciplinary proceedings, and prisoner counseling.

Controls entry and exit from the facility; identifies employees, visitors and law enforcement personnel entering the facility; escorts and monitors visitors while in the facility.

Oversees prisoners on various work assignments.

Ensures that security systems, fire fighting equipment, fire detection systems, and other equipment in the facility are in operating condition.

Trains corrections officers assigned as on-the-job trainees or newly assigned training academy graduates.

Prepares written records and reports related to the work.

Assists in maintaining proper standards of personal care and hygiene of prisoners.

May take part in searches for escaped prisoners.

Works to maintain stable interpersonal dynamics with prisoners and staff.

May dispense prescribed medication to prisoners as directed.

May operate such computerized equipment as gate controls.

May oversee construction areas within a facility to assist work crew leaders with general security and safety of the area.

May supervise prisoner work crews outside correctional facility.

JOB QUALIFICATIONSKnowledge, Skills, and Abilities

NOTE: Some knowledge is required at the entry level and considerable knowledge is required at the experienced level.

CORRECTIONS OFFICER

PAGE NO. 4

Knowledge of individual and group counseling techniques.

Knowledge of basic first-aid procedures.

Knowledge of accident prevention.

Knowledge of various prisoner sub-cultures.

Knowledge of prisoner behaviors and problems.

Knowledge of standards of hygiene and health care standards about contagious diseases.

Knowledge of security procedures and techniques.

Knowledge of departmental rules, regulations, policies, and procedures.

Ability to relate to prisoners and gain their respect and confidence.

Ability to oversee prisoners in the performance of various work functions.

Ability to read, learn, and apply facility and departmental policies, procedures, rules, regulations, and employee handbook.

Ability to successfully complete in-service education and training programs.

Ability to maintain composure during stressful situations.

Ability to observe critically, obtain accurate data, and prepare written records and reports.

Ability to divert violence or ease tension through persuasion and understanding, rather than use of force.

Ability to provide a positive role model to the prisoner population.

Ability to train and oversee recruits and trainees.

Ability to communicate effectively.

Working Conditions

An employee may be assigned to work any day of the week, or on any shift or assignment.

RECEIVED by MSC 12/20/2021 4:03:47 PM

CORRECTIONS OFFICER

PAGE NO. 5

The work is performed in an environment that is extremely uncomfortable and where the work involves a significant chance of incurring a disabling or life threatening injury.

Some jobs require an employee to work in an uncomfortable environment.

Some jobs require an employee to work in high stress situations.

Some jobs require an employee to work under hazardous situations.

Physical Requirements

The job duties require an employee to meet the physical requirements of the work, which includes the performance of strenuous tasks requiring muscular strength and coordination, and cardiovascular endurance.

Ability to work in an environment with various degrees of discomfort.

Ability to wear and operate respiratory protection devices.

Ability to operate a motor vehicle.

Considerable knowledge of the techniques of self-defense, disturbance control, firearms, fire fighting, and detection of weapons and contraband.

Ability to qualify with and use various firearms.

Skill in the use of firearms and fire fighting equipment.

Ability to learn and apply self-defense and other procedures for dealing with violent or abusive prisoners.

Education

Possession of a high school diploma or a GED Certificate and fifteen semester (or 23 term) college credit hours in one or a combination of the following areas: correctional administration, criminal justice, criminology, psychology, social work, sociology, counseling and guidance, educational psychology, family relations, pastoral counseling, or law enforcement. (May have up to 18 months after date of hire to satisfy this requirement.)

OR

Possession of 30 semester (or 46 term) college credit hours leading toward a degree in any major. (This option is not available after date of hire.)

CORRECTIONS OFFICER

PAGE NO. 6

Experience

Corrections Officer 8

No specific type or amount of experience is required.

Corrections Officer E9

One year of experience as a Corrections Officer or a Corrections Medical Aide.

Alternative Education and Experience

Corrections Officer 8

Possession of a bachelor's degree in any major.

OR

Completion of a recognized corrections training program in another state or federal jurisdiction, completion of at least two years of full-time corrections officer work experience, and must be currently employed satisfactorily in a corrections position or have left corrections employment in satisfactory status.

Special Requirements, Licenses, and Certifications

Any individual with a felony conviction, a controlled substance violation in any jurisdiction "including military", pending felony or misdemeanor charges, a domestic violence conviction or outstanding warrants, is ineligible for consideration for employment by Michigan Department of Corrections.

The Department of Corrections will not hire individuals who have been convicted of a felony or who have felony charges pending, in accordance with Public Act 140 of 1996.

In addition, an applicant who has been convicted of any other misdemeanor shall not be eligible for employment until one year after satisfactory completion of any sentence imposed, including probation.

At least eighteen (18) years of age at time of employment as a corrections officer.

Ability to pass a post-offer medical exam, a drug screen, and a physical fitness test.

Ability to effectively perform essential job functions with or without accommodations.

Ability to successfully complete a 640 hour training academy which includes written examinations and practical skill examinations.

Willingness to submit to a thorough background investigation designed to assess the applicant's suitability for employment as a corrections officer.

Satisfactory completion of annual recertification and training.

CORRECTIONS OFFICER

PAGE No. 7

NOTE: Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION

<u>Job Code</u>	<u>Job Code Description</u>	
CORROFR	Corrections Officer	

<u>Position Title</u>	<u>Position Code</u>	<u>Pay Schedule</u>
Corrections Officer-E	CORROFRE	C12-001

ECP Group 1
12/12/01
GJH/VLWT/gjn

RECEIVED by MSC 12/20/2021 4:03:47 PM

Davis, Elaine D. (MDOC)

From: Olden, Fatima (MDOC)
Sent: Tuesday, September 08, 2015 11:56 AM
To: Davis, Elaine D. (MDOC)
Subject: Disability Accommodation Appeal Statement

1. I meet the basic requirements of my job in performing all essential functions(see job description per civil service & state of Michigan). I have been a corrections officer for 17 years. I am fully trained and qualified per all training standards for the position of Corrections Officer. I have continued to perform all duties under the modified assignment work schedule being applied by my shift command at this time. I am being placed in Housing Units# 2, 4, 5,6 or 7 away from animals who are housing here on facility grounds.
2. To continue to schedule/accommodate me by placing me in Housing Units#2,4,5,6 and 7 away from the animals on facility grounds does not cost money or create an undue hardship for the facility or the State of Michigan. The fact that I am being accommodated in this fashion right now demonstrates that this accommodation is working and practical in order to accommodate my allergic condition and keep me working here at this facility with the ability to perform all essential duties as required including the ability to respond to duress within my immediate location. The fact is officers does not work in every assignment at one time. Nor will the dog be located on every position on the facility grounds. Because the housing units(1&3) where dogs are housing at this time is the issue, this is a matter of scheduling my work assignment to another Housing unit position. Not changing my geographic location/work Site overall to another Correctional Facility.
3. Macomb Correctional Facility and the State of Michigan have failed to explain in detail on the Response to Disability Accommodation Request Form CS-1668#7 what specific functions of my job I cannot perform in order to justify the offer of transfer to DRC Facility in Detroit Michigan 40 miles/30 minutes one way away from my home and current work site.
4. I live in Macomb County 6 mile/15 minutes away from my work site of Macomb Correctional Facility. To be transferred to DRC Facility that is 19miles/30 minutes one way away from my home and my job will create an undue hardship financially and otherwise. Also, if transferred I will not be guaranteed to work the same midnight shift position I am currently working at this time.
5. Lastly, the Leader Dogs serve no significant purpose to the officer or facility directly. The dogs are not certified in rescue regarding fire or drug detection. The dog cannot count prisoners, conduct searches, detect or prohibit behavior that might be a threat to security, respond to critical incidents, control disturbances, transport prisoners, control prisoner movement, use a fire arm ECD,or AED or write reports. All things I am trained by the State of Michigan and The Department of Corrections to handle. So at this time I am I am requesting to appeal the decision to deny my request to be accommodated on my position as correctional officer at Macomb Correctional Facility.



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

September 10, 2015

Ms. Fatima Olden
[REDACTED]

Re: Americans with Disabilities Act (ADA) Appeal

Dear Ms. Olden:

This letter is to inform you that I have received your ADA appeal statement concerning the denial of your request to work in assignments where you would not have contact with the dogs that are at the Macomb Correctional Facility, as well as not to respond to an emergency and/or duress in any areas where dogs may be housed.

As indicated to you in the September 3, 2015 ADA response letter from Elaine Davis, the ability to work all positions and all shifts is an essential function of a Corrections Officer position. In addition to being an essential function, the ability to move officers around the facility to any position at any time, and the ability to respond to all emergencies and/or duress calls is a safety and security issue for the facility. Your physician has indicated that due to your disability, you are unable to work any assignment where you may be exposed to dogs. In addition, your physician has indicated that performing this job function may result in a direct safety or health threat to either yourself and/or coworkers. The ADA does not require an employer to remove an essential function in order to accommodate an employee. The ADA does not require an employer to allow for an accommodation that may result in a direct safety or health threat to the employee or other coworkers.

In your appeal, you have indicated that you are currently working in a modified or light duty assignment and wish to continue to work in that capacity. However, the Department does not have permanent light duty Corrections Officer positions. Based on the information indicated above, and the information you provided in your ADA request, the Department is unable to accommodate you on a permanent basis at the Macomb Correctional Facility. The Department does however, have vacant Correction Officer positions at the Detroit Reentry and Detention Center, a facility located within a reasonable driving distance from the Macomb Correctional Facility. This facility does not have a prisoner program that may require you to be exposed to dogs.

The Department is in no way questioning your qualifications as a Corrections Officer, nor is this accommodation response of a transfer to a different facility a punitive measure. A transfer to a vacant position that allows the employee to perform the essential functions of the job is considered a reasonable accommodation under the law. Your appeal did not provide any additional information that would allow you to perform the essential functions of the Corrections Officer position at the

Macomb Correctional Facility. If you and/or your physician can offer an alternative accommodation that would allow you to work all assignments at the Macomb Correctional Facility and respond to all emergencies and/or duress calls, we would certainly be open for further discussion. Absent any additional information, your appeal to remain in modified duty at the Macomb Correctional Facility is denied.

Sincerely,

Joanne M. Bridgford
EEO Administrator
MDCS/MDOC

cc: Ms. Elaine D. Davis, HRO



INSTITUTE OF MICHIGAN JEFFREY M. BRUNER, D.O., P.C. • ANGELA M. IACOBELLI, M.D.
42607 GARFIELD • CLINTON TOWNSHIP, MI • 48038 • (586) 286-9010

September 21, 2015

Ms. Elaine Davis, Accommodations Coordinator, Macomb Correctional Facility
Ms. Joanne Bridgford, EEO Administrator / MDCS / MDOC

RE: OLDEN, Fatima
D.O.B: [REDACTED]

To Whom It May Concern:

I received a request to forward you information concerning the above patient. Fatima was initially seen, evaluated, and assessed in the office on September 21, 2015. She complains of upper respiratory symptoms, congestion, and runny nose. Skin testing was carried out and all testing was negative with a positive histamine control. It appears at this time that she is not having any major problems that we can identify as allergens precipitating her symptoms.

I hope this information will prove beneficial to you in the continuing care of your patient. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey M. Bruner, D.O., FCCP, FACOI, FAAAAI

JMB/vn

RECEIVED by MSC 12/20/2021 4:03:47 PM

Jeffrey M. Bruner, D.O., P.C.
Angela M. Iacobelli, M.D.
Pediatric and Adult Allergy & Immunology
Bronchial Asthma

42607 Garfield
Clinton Township, MI 48038-1138
(586) 286.9010

- Excuse
- Certificate of Care
- Permission to Return to Work
- Permission to Return to School

Date 9/21/15

Patient's Name Fatima Aiden

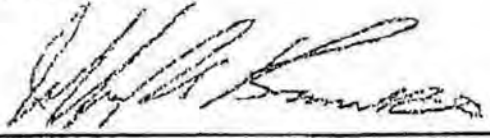
The above named patient has been under my care for the following condition:
Asthma + Allergy Testing

He/she had an appointment in this office on 9/21/15 @ 9:15 am

He/she is able to return to work/school on 9/22/15

Restrictions: 0

Please excuse this absence.

Thank you, 

Dr. Jeffrey M. Bruner
Dr. Angela M. Iacobelli

RECEIVED by MSC 12/20/2021 4:03:47 PM

20/2021 4:03:47 PM

DR. PAULEENA SINGH MD
Diplomate, The American Board of Family Medicine
DEA # FS0763309

Bloomfield Medical Village • Suite A1
6405 Telegraph Road • Bloomfield Hills, MI 48301
248-792-3690 • 248-792-3691 • 248-792-3692 • Fax 248-792-3689

Name Fatima R. O'Brien
Address _____ Date 9/16/15

Rx Refer to allergist
& chronic worsening
= allergies
to dogs
for testing and evaluation

LABEL
REFILL _____ TIMES _____ PRN _____ NR _____
M.D.

Another brand of generically equivalent product, identical in dosage form and content of active ingredients, may be dispensed unless otherwise indicated (P.A.W.)

DR. PAULEENA SINGH MD
Diplomate, The American Board of Family Medicine
DEA # FS0763309

Bloomfield Medical Village • Suite A1
6405 Telegraph Road • Bloomfield Hills, MI 48301
248-792-3690 • 248-792-3691 • 248-792-3692 • Fax 248-792-3689

Name Fatima R. O'Brien
Address _____ Date 9/16/15

Rx Flonase nasal spray
1 spray / nose qh
X 2 weeks
1 bottle

LABEL
REFILL _____ TIMES _____ PRN _____ NR _____
M.D.

Another brand of generically equivalent product, identical in dosage form and content of active ingredients, may be dispensed unless otherwise indicated (P.A.W.)

PAGE 09

0483

FEDEX OFFICE

586--412-8124

15:16

09/23/2015

20/2021 4:03:47 PM

JEFFREY M. BRUNER, D.O.
NPI: 1215955422

ANGELA M. IACOBELLI, M.D.
NPI: 1154356962

Pediatric and Adult Allergy and
Clinical Immunology • Bronchial Asthma
42607 Garfield • Clinton Twp., MI 48038
(586) 286-9010 • Fax (586) 286-7910

Name Fatima Olden Date 9-21-15

R Address _____

*Pt had allergy testing today,
Universally negative.*

*Pt is not allergic to dogs.
MAN RETURN TO WORK AT 12/15*

Refill _____ Times

Dr. _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FATIMA OLDEN,

Plaintiff,

Case No.: 18-001424-CD

Hon.: Dana M. Hathaway

v.

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for Plaintiff
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000/ Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

KYLA L. BARRANCO (P81082)
ADAM R. DE BEAR (P80242)
Assistant Attorney General
Attorney for Defendants
Civil Litigation, Employment &
Elections Division
P.O. Box 30736
Lansing, MI 48909
(507) 373-6434/ Fax: (517) 373-2454
barrancok@michigan.gov
deBearA@michigan.gov

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, FATIMA OLDEN, by and through her attorneys, RASOR LAW FIRM, PLLC, and for her First Amended Complaint against the above-named Defendants, hereby state as follows:

JURISDICTION AND PARTIES

1. This cause of action involves violations of Plaintiff's civil rights, as secured by the United States and Michigan Constitutions, and is brought pursuant to the statutes and common law of the State of Michigan and pendant federal law claims against the above named Defendants.

2. At all times relevant to this lawsuit, Plaintiff FATIMA OLDEN (herein “Plaintiff”) was a resident of the Township of Clinton, County of Macomb, and State of Michigan.

3. Defendant MICHIGAN DEPARTMENT OF CORRECTIONS (hereinafter “MDOC”) is a governmental entity created pursuant to the laws of the State of Michigan, and Defendant State of Michigan is a state government.

4. Defendants MDOC and the State of Michigan are public employers.

5. Defendant MDOC and Defendant State of Michigan are both “employers” within the meaning of Michigan Persons with Disabilities Civil Rights Act, M.C.L. §37.1201(b) (hereinafter “PWDCRA”),

6. Defendant MDOC and Defendant State of Michigan are both a “program or activity” receiving Federal assistance within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a)-(b).

7. Defendant MDOC and Defendant State of Michigan are both a “public entity” within the meaning of Title II of the Americans With Disabilities Act, § 12131 (hereinafter “ADA”),

8. Defendant Warden Patrick Warren is subject to liability in his official capacity pursuant to Title I of the ADA, § 12101, et seq., via *Ex Parte Young*, 29 U.S. 123 (1908).

9. Defendant, Macomb Correctional Facility, is a male correctional facility that is run by MDOC in the City of New Haven, County of Macomb, State of Michigan. This where all of the discriminatory employment conduct and practices occurred.

10. At all times relevant to this lawsuit, Warden Patrick Warren was an employee of Defendant, MDOC, and was acting under the color of state law and in the course and scope of his employment and is being sued in his official capacity.

11. At all material times relevant to this lawsuit, Plaintiff was an employee, and Defendant MDOC was his employer.

12. Venue is proper in this judicial circuit under MCL § 600.1615 because Defendant MDOC is a governmental entity that exercises governmental authority in Wayne County.

13. The amount in controversy in this action exceeds Twenty-Five Thousand Dollars (\$25,000.00) exclusive of interest, costs and attorney’s fees, and this case is otherwise properly within the jurisdiction of the Wayne County Circuit Court.

ADMINISTRATIVE PROCEDURES

14. Plaintiff filed a charge with the EEOC based on disability discrimination on or around September 2015.

15. After completing its investigation, the EEOC found probable cause that Defendant MDOC was in violation of the ADA on September 27, 2016.

16. After attempting to conciliate the dispute, because Defendant MDOC refused to the terms of the EEOC’s proposed conciliation agreement, Plaintiff’s charge was transferred to the Department of Justice for possible litigation on December 27, 2016.

17. After investigating Plaintiff’s claims, the Department of Justice determined it would not pursue charges on Plaintiff’s behalf, and granted her a Right to Sue letter on December 4, 2017.

18. Plaintiff has satisfied all jurisdictional requirements set forth by the EEOC for bringing federal causes of employment discrimination.

FACTUAL ALLEGATIONS

19. Plaintiff began working for Defendant MDOC approximately twenty years ago as a correction officer.

20. Defendant MDOC started a “leader dog” program at the Macomb Facility, where inmates trained dogs to become leader dogs for the blind.

21. The “leader dog” program only encompassed certain housing units in the facility.

22. Plaintiff was assigned to a housing unit that maintained inmates who had the dogs, and thus Plaintiff was required to regularly come into contact with the dogs during her shifts.

23. When Plaintiff would come into close contact with the dogs, she experienced itchy, watery eyes, severe chest and nasal congestion, fatigue and difficulty breathing.

24. Plaintiff immediately brought these concerns regarding her continual interactions with dogs and what she described as allergy-related reactions to the dogs’ presence to her supervisor, Captain Holcomb.

25. Per Captain Holcomb’s instructions and Defendant MDOC’s policies, Plaintiff filed a “Disability Accommodation Request and Medical Statement” on August 13, 2015.

26. In her formal accommodation request, she requested the reasonable accommodation of being placed away from the housing units that have dogs so she will not have regular, direct contact.

27. Plaintiff’s healthcare provider also completed a section of her accommodation form where she documented the same requests and accommodations as Plaintiff.

28. Plaintiff also suffers from extrinsic asthma.

29. During this time, Plaintiff required shots to combat her symptoms and was permitted to go on light duty.

30. Because of the duration of some of the shots she took to combat her symptoms, Plaintiff was forced to take a few days off from work.

31. Following Plaintiff's request for an accommodation, the Macomb Facilities Accommodation coordinator, Elaine Davis, refused to assist Plaintiff or inquire into positions that might have been available pending a determination of her formal request for an accommodation.

32. On or around September 8, 2015, Defendant MDOC denied Plaintiff's accommodation request on the basis that "the ability to work all positions and all shifts is an essential function of a Corrections Officer position."

33. Defendant MDOC recognized in its denial letter that Plaintiff's physician had indicated she Plaintiff was unable to work assignments that would expose her to close contact with dogs and this was permanent.

34. Despite Defendant MDOC's denial of Plaintiff's permanent request, Plaintiff continued to seek temporary relief from the housing units containing dogs from her supervisors.

35. Plaintiff's supervisor, Captain Holcomb, refused to permit Plaintiff to receive temporary accommodations.

36. One of the reasonable accommodations Plaintiff sought from Defendant MDOC was a position in the correctional facility warehouse, which at the time had two available positions.

37. The warehouse positions did not have interactions with dogs.

38. Instead of permitting Plaintiff one of these positions, Defendant MDOC gave these positions to two other corrections officers.

39. One of the individuals who received this warehouse position, CO (first name unknown) Sweets, had been on a light duty after a work-related injury, and Elaine Davis had placed her in the warehouse as a transitional placement.

40. Ultimately Ms. Davis' transitional placement in the warehouse became permanent.

41. Despite Plaintiff requesting a similar accommodation as Ms. Davis, Defendant ignored her reasonable request and failed to find any other reasonable accommodation.

42. Following Plaintiff's formal request for an accommodation, and the filing of her EEOC charge of discrimination, Plaintiff experienced more hostile interactions from her supervisors, who seemed more confrontational towards her.

43. Plaintiff also received a flux of write-ups following her request for an accommodation and the filing of her EEOC charge of discrimination.

44. Defendant MDOC has a policy where when a corrections officer receives write-ups, their presence in her file substantially limits or eliminates his or her ability to receive a promotion or an increase in employment benefits.

COUNT I
VIOLATION OF M.C.L. § 37.1101, et seq., THE MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT — DISCRIMINATION AND/OR FAILURE TO ACCOMMODATE AS TO DEFENDANTS' MDOC AND STATE OF MICHIGAN

45. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 44, as if fully set forth herein.

46. The Michigan Persons with Disabilities Civil Rights Act, M.C.L. § 37.1101 *et seq.*, prohibits the discharge or otherwise discrimination against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

47. The PWDCRA also requires an employer to “accommodate a person with a disability for purposes of employment ... unless the person demonstrates that the accommodation would impose an undue hardship.”

48. At all relevant times, Plaintiff was a qualified individual with a disability within the meaning of the PWDCRA. Specifically, Plaintiff has a physical impairment that substantially limits one or more of her major life activities, has a record of the impairment, and/or was regarded Plaintiff as having such an impairment.

49. Plaintiff's asthma and/or allergies limited, and/or were regarded as limiting, the substantial major life, activities of performing manual tasks, breathing, working, and the operation of her respiratory system.

50. Plaintiff is qualified for the position and could perform the essential job duties of a corrections officer with or without a reasonable accommodation.

51. Plaintiff's disability was unrelated to Plaintiff's ability to perform her duties as a corrections officer.

52. Even though Defendant had available accommodation methods that were not unduly burdensome to Defendant in any manner, Defendant refused to accommodate Plaintiff's written request for a reasonable accommodation.

53. Defendant MDOC's policies regarding when it permits an accommodation, how it determines an accommodation is warranted, and how it defines the essential functions of a job duty for corrections officers are facially discriminatory and violate the PWDCRA and ADA.

54. Defendant violated the PWDCRA when it discriminated against Plaintiff on the basis of her disability by failing to accommodate her reasonable requests for an accommodation.

55. Defendant treated Plaintiff, because of her disability, more harshly than it treated other similarly-situated employees for the same conduct.

56. Based on Defendant MDOC's policies and procedures, a corrections officer receiving write-ups substantially limits or eliminates his or her ability to receive a promotion or an increase in employment benefits.

57. Because of the discriminatory write-ups Plaintiff received, she was substantially limited in any chance to be promoted or receive any other increase in employment benefits.

58. Plaintiff is under the information and belief that Defendant, through its agents, representatives, and employees, treated Plaintiff differently from similarly situated employees, in the terms and conditions of her employment, based upon the unlawful, stereotypical, generalized consideration of Plaintiff's disability and/or requests for accommodations.

59. Defendant's actions were intentional and in disregard of Plaintiff's rights and sensibilities.

60. Defendant failed to make good faith efforts to establish and enforce policies to prevent illegal discrimination against its employees, including disability discrimination.

61. Defendant failed to properly train or otherwise inform its supervisors and employees concerning their duties and obligations under the civil rights laws, including the PWDCRA.

62. As a direct and proximate result of Defendant's unlawful action, Plaintiff has sustained injuries and damages, including, but not limited to: potential loss of earning capacity, loss of career and employment opportunities, loss of employee benefits, humiliation and embarrassment, mental and emotional distress, and loss of everyday pleasures of everyday life.

63. Pursuant to the PWDCRA, Defendants are liable to Plaintiff for all damages allowed under state law. To the extent that the damages allowable and/or recoverable are deemed

insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs, interest, and attorney fees so wrongfully incurred, as the Court deems just.

COUNT II
PWDCRA RETALIATION AS TO DEFENDANTS' MDOC
AND STATE OF MICHIGAN

64. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 63, as if fully set forth herein.

65. The PWDCRA, M.C.L. § 37.1602(a), prohibits retaliation against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

66. At all times relevant, Plaintiff was an employee of Defendant covered by and within the meaning of M.C.L. § 37.1201.

67. As an employer within the meaning of the PWDCRA, M.C.L. § 37.1201(b), Defendant owed Plaintiff a duty not to retaliate against her with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of his protected activities.

68. Plaintiff engaged in the protected activity of requesting a reasonable accommodation pursuant to the PWDCRA and also when she filed her EEOC charge of discrimination regarding Defendant's discrimination.

69. Defendant had knowledge of Plaintiff's protected activities as set forth in the preceding paragraphs.

70. Had Plaintiff not requested a reasonable accommodation or filed her charge of discrimination, Plaintiff would not have been subjected to adverse treatment from her supervisors.

71. Immediately following Plaintiff's request for an accommodation and then closely following her charge of discrimination, Plaintiff's supervisors began treating her more hostile and confrontational.

72. Plaintiff also received an influx of unexpected, unwarranted write-ups following her engagement in the aforementioned protected activities.

73. Defendant's actions in retaliating against Plaintiff on the basis of her request for an accommodation and filing her EEOC charge were conducted with malice or reckless indifference to Plaintiff's federally protected rights.

74. Defendant failed to make good faith efforts to establish and enforce policies to prevent illegal retaliation against its employees

75. Defendant, by and through its agents, servants, and/or employees, subsequently took adverse, retaliatory actions against Plaintiff including, but not limited to, denying Plaintiff conditions, terms, opportunities, and privileges provided to other employees of Defendant.

76. Defendant and its agents, servants and/or employees' actions were intentional with reckless indifference to Plaintiff's rights and sensibilities.

77. As a direct and proximate result of Defendants' unlawful action, Plaintiff has sustained injuries and damages, including, but not limited to: potential loss of earning capacity, loss of career and employment opportunities, loss of employee benefits, loss of promotional

opportunities, humiliation and embarrassment, mental and emotional distress, and loss of everyday pleasures of everyday life.

78. Pursuant to the PWDCRA, Defendants are liable to Plaintiff for all damages allowed under state law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants in an amount that is fair and reasonable and compensates Plaintiff for her injuries, plus costs, interest, and attorney fees, as well as punitive and/or exemplary damages so wrongfully incurred.

COUNT III
VIOLATION OF 42 U.S.C § 12101, et seq., TITLE I OF THE AMERICANS WITH
DISABILITIES ACT, AS TO DEFENDANT WARDEN PATRICK WARREN

79. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 78, as if fully set forth herein.

80. Title I of the Americans with Disabilities Act, 42 U.S.C. § 12112, prohibits discrimination against any qualified individual on the basis of disability in regard to job application procedures, hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

81. 42 U.S.C. § 12111(8) defines qualified individual to mean an individual who with or without reasonable accommodation can perform the essential functions of the employment position that such individual holds or desires.

82. At all relevant times, Plaintiff was a qualified individual within the meaning of 42 U.S.C. § 12111(8).

83. Plaintiff could perform her job duties with, or without, a reasonable accommodation.

84. Plaintiff's asthma and/or allergies when around dogs limited and/or were regarded as limiting the substantial major life activities of performing manual tasks, breathing, working, and the operation of her respiratory system.

85. 42 U.S.C. § 12112(b) defines discrimination against a qualified individual on the basis of disability. The definition of discrimination includes the failure to reasonably accommodate a disabled individual. It includes the following:

a. 42 U.S.C. § 12112(b)(3) includes in the definition of discrimination utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability.

b. 42 U.S.C. § 12112(b)(5) includes in the definition of discrimination the failure to reasonably accommodate a qualified individual with a disability.

c. 42 U.S.C. § 12112(b)(6) includes in the definition of discrimination the use of qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with a disability unless it is shown to be job related for the position in question and consistent with business necessity.

86. A facially discriminatory policy is direct evidence of disability discrimination.

87. The ADA also requires an individualized inquiry into each individual's specific situation and need for an accommodation.

88. Defendant violated the ADA when it discriminated against Plaintiff on the basis of her disability by failing to accommodate her reasonable requests for an accommodation and treating her more hostile, including an influx of write-ups, following her request for an accommodation.

89. Defendant discriminated against Plaintiff by enforcing its policies regarding requested accommodations and what is an essential job function, which are in violation of the ADA.

90. Defendant Warden Patrick Warren at all times relevant to this cause of action had the final decision-making authority and enforcement authority to enact policies, procedures, regulations, or customs regarding, but not limited to, when, how, and who to give an accommodation to, and the final decision-making authority on the denial of a request for an accommodation and the basis for which Defendant MDOC makes such denial.

91. By ignoring ongoing discrimination and enforcing discriminatory policies against Plaintiff and other similarly-situated employees, Defendant Warden Patrick Warren disregarded Plaintiff's basic rights under the United States government and the Americans with Disabilities Act.

92. Defendant's actions and policies in discriminating against Plaintiff on the basis of her disability and failing to accommodate Plaintiff were conducted with malice or reckless indifference to Plaintiff's federally protected rights.

93. As a direct and proximate result of Defendant's unlawful actions against Plaintiff as described herein, which constitute a violation of Plaintiff's federally protected rights.

WHEREFORE, Plaintiff prays for the following relief from this Honorable Court:

- a. A declaratory judgment that Defendant's policies, practices, and procedures in the past have prevented and continue to prevent, Plaintiff, along with other similarly situated employees from receiving a "reasonable accommodation" pursuant to ADA.
- b. An injunction prohibiting Defendant's discriminatory policy of refusing to allow reasonable accommodations based on a discriminatory standard, and requiring them to follow the ADA requirements.
- c. A declaration that Defendant's policies regarding accommodations and the essential job functions unlawfully violate Plaintiff's, and other similarly situated corrections officers, rights under the ADA, ADAAG Guidelines, and ADA Regulations.

- d. An award of interest, costs, and reasonable attorney fees in litigating this matter; and
- e. All other relief this Honorable Court deems just and proper.

COUNT IV
VIOLATION OF 29 U.S.C § 794, et seq., SECTION 504 OF THE REHABILITATION
ACT AS TO DEFENDANT MDOC AND STATE OF MICHIGAN

94. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 93, as if fully set forth herein.

95. The purpose of the Rehabilitation Act is to ensure that no “qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

96. The claims under the Rehabilitation Act are brought against Defendant MDOC as a department, agency, or instrumentality of Defendant State of Michigan.

97. Plaintiff is an “individual with a disability” within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(a)-(b).

98. The operations of Defendant MDOC are “programs or activities” within the meaning of the Rehabilitation Act.

99. Defendant MDOC receives “federal assistance” within the meaning of 29 U.S.C. § 794(a).

100. The DOJ regulation implementing the Rehabilitation Act clarifies the requirements for Federal financial recipients, including correctional facilities, stating: “ a recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program or activity. 28 C.F.R. § 42.511(a).

101. A reasonable accommodation includes, among others, making facilities usable by handicapped persons, and/or “job restructuring.” 28 C.F.R. § 42.511(b).

102. “No qualified handicapped person shall on the basis of handicap be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.” 28 C.F.R. § 42.510(a)(1).

103. Defendant MDOC is required to “make all decisions concerning employment under any program or activity receiving Federal financial assistance in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.” 28 C.F.R. § 42.510(a)(2).

104. Defendants discriminatorily impaired and denied Plaintiff’s ability to receive a reasonable accommodation and receive the benefits of Defendant’s disability accommodation program and excluded Plaintiff from the same program in violation of the Rehabilitation Act.

105. Defendant’s failure to provide Plaintiff with a reasonable accommodation in lieu of her disability and/or her perceived disability denied Plaintiff the Defendants’ services, benefits, activities, programs, or privileges as the access provided to non-disabled individuals.

106. On information and belief, this denial and failure to provide comparable access to Defendants’ services, benefits, activities, programs or privileges arose from Defendants’ facially discriminatory policies, practices, and enforcement of the same. These policies are ongoing and continue to this date.

107. Defendants have also violated the Rehabilitation Act by excluding Plaintiff from its accommodation program and/or proper non-discriminatory standards for granting an accommodation.

108. As a proximate result of Defendants' violation of Plaintiff's rights under the Rehabilitation Act, Plaintiff has suffered, and continues to suffer, from discrimination, unequal treatment, exclusion from Defendants' programs, financial loss, loss of employment and promotional opportunities, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, including unnecessary disciplinary measures, and injury to her health.

109. Defendants' failure to comply with the Rehabilitation Act has resulted in harm to Plaintiff, and Defendants are liable to Plaintiff for harms suffered.

110. Pursuant to Section 504 of the Rehabilitation Act, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants including but not limited to compensatory damages in whatever amount she is found to be entitled, exemplary damages commensurate with the wrong and Defendant's ability to pay, and an award of her fair and reasonable attorney fees, cost of litigation, and interest.

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila

ANDREW J. LAURILA (P78880)

Attorney for Plaintiff

201 E. 4th Street

Royal Oak, MI 48067

Dated: September 26, 2018

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FATIMA OLDEN,

Plaintiff,

Case No.: 18-001424-CD
Hon.: Dana M. Hathaway

v

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for *Plaintiff*
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000/ Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

KYLA L. BARRANCO (P81082)
ADAM R. DE BEAR (P80242)
Assistant Attorney General
Attorney for Defendants
Civil Litigation, Employment &
Elections Division
P.O. Box 30736
Lansing, MI 48909
(507) 373-6434/ Fax: (517) 373-2454
barrancok@michigan.gov
deBearA@michigan.gov

DEMAND FOR JURY TRIAL

NOW COME Plaintiff, Fatima Olden, by and through her attorneys, THE RASOR LAW FIRM, and hereby respectfully requests trial by jury in the above captioned matter.

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila
ANDREW J. LAURILA (P78880)
Attorney for Plaintiff
201 E. 4th Street
Royal Oak, MI 48067

Dated: September 26, 2018

PROOF OF SERVICE

The undersigned certified that a copy of the foregoing instrument was delivered to each of the attorneys of record and/or unrepresented and/or interested parties on **September 26, 2018**, at their respective addresses as disclosed in the pleadings on record in this matter by:

- US First Class Mail
- Hand Delivery
- Fed Ex
- Facsimile Transmission
- UPS
- Other: Efiling

/s/ Callie A. Pederson
Callie A. Pederson

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

FATIMA OLDEN,

No. 18-001424-CD

Plaintiff,

HON. DANA MARGARET
HATHAWAY

v

MICHIGAN DEPARTMENT OF
CORRECTIONS, STATE OF
MICHIGAN, and WARDEN PATRICK
WARREN, in
his official capacity,

Defendants.

RASOR LAW FIRM, PLLC

James B. Rasor (P43476)
Andrew J. Laurila (P78880)
Attorneys for *Plaintiff*
Rasor Law Firm, PLLC
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000
(248) 543-9050 (fax)
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorneys for *Defendants*
Civil Litigation Employment and
Elections Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162
(517) 373-2060 (fax)
asbensonk@michigan.gov

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AS
TO COUNTS III AND IV OF PLAINTIFF'S AMENDED COMPLAINT**

At a session of said court held in the
courthouse located in the City of Detroit,
County of Wayne, State of Michigan on
2/5/2019

This matter having come before the court on Defendant's Motion for Summary
Disposition as to Counts III and IV of Plaintiff's Amended Complaint; all parties having

been presented; the court having entertained oral argument, and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to Counts III and IV of Plaintiff's Amended Complaint brought under MCR 2.116(C)4 is denied with prejudice for reasons stated on the record.

In accordance with MCR 2.602(A)(3), this order does not resolve the last pending claim and the case remains open.

/s/ Dana Margaret Hathaway
Honorable Dana Margaret Hathaway, Circuit Judge

Approved as to form:

/s/ Andrew J. Laurila
Andrew J. Laurila (P78880)
Attorney for Plaintiffs

/s/ Kendell S. Asbenson (w/ permission)
Kendell S. Asbenson (P81747)
Attorney for Defendant

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

FATIMA OLDEN,

Plaintiff,

No. 18-001424-CD

v

HON. DANA M. HATHAWAY

MICHIGAN DEPARTMENT OF
CORRECTIONS, STATE OF MICHIGAN,
and WARDEN PATRICK WARREN, in
his official capacity,

Defendants.

James B. Rasor (P43476)
Andrew J. Laurila (P78880)
Attorneys for Plaintiff
Rasor Law Firm, PLLC
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000
(248) 543-9050 (fax)
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorney for Defendants
Civil Litigation, Employment &
Elections Division
P.O. Box 30217
Lansing, MI 48909
(517) 373-6434
(517) 241-7987 (fax)
asbensonk1@michigan.gov

**DEFENDANTS' BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY
DISPOSITION AS TO COUNTS III AND IV OF AMENDED COMPLAINT**

INTRODUCTION

Michigan adheres to the general rule of sovereign immunity which provides that "because the state, as creator of the courts, was not subject to them or their jurisdiction." *Ross v Consumers Power Co*, 420 Mich 567, 598 (1984). As such, Michigan is not subject to the jurisdiction of the courts unless it submits to their

jurisdiction through the Legislature. *Greenfield Const Co Inc v Michigan Dept of State Highways*, 402 Mich 172, 194 (1978). While Michigan has submitted to the jurisdiction of the Court of Claims and courts have ruled that it submitted to the jurisdiction of the circuit courts under certain statutory causes of action, Michigan has not submitted to the jurisdiction of its courts under federal causes of action. What is more, Section 6440 of the Court of Claims Act, MCL 600.6440, expressly provides that the Court of Claims *does not have jurisdiction* over claims for which there are adequate remedies available in the federal courts.

Accordingly, Plaintiff's federal claims are confronted with two jurisdictional deficiencies. First, because the Legislature has not consented to the jurisdiction of the circuit courts as to federal claims, this Court lacks subject matter jurisdiction. Second, because the Court of Claims similarly lacks subject matter jurisdiction over Plaintiff's federal claims, transfer under Section 6404 of the Court of Claims Act, MCL 600.6404, is inappropriate.

Consequently, the only option available to this Court is to dismiss Plaintiff's federal claims without prejudice for lack of subject matter jurisdiction. And, in the event that Plaintiff wishes to maintain its federal claims, the federal courts are the only courts of competent jurisdiction.

STATEMENT OF RELEVANT FACTS

Plaintiff Fatima Olden, on September 26, 2018, by leave granted, filed her amended complaint against the State of Michigan, the Michigan Department of Corrections, and the current warden of the Macomb County Correctional Facility (herein referred to collectively as Defendants). Counts I and II of Plaintiff's

amended complaint are brought under the Michigan Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101, *et seq.*, Count III is brought under Title I the Americans with Disabilities Act (ADA), 42 USC § 12101, *et seq.*, and Count IV is brought under section 504 of the Rehabilitation Act, 29 USC § 794. (Am Compl, ¶¶ 65, 82, 97, 114.) Counts I and II arise under Michigan law and Counts III and IV arise under federal law.

STANDARD OF REVIEW

When reviewing a motion to dismiss brought under MCR 2.116(C)(4), a court must review the pleadings and other documentary evidence submitted by the parties in support or opposition of the motion. *Sun Communities v Leroy Twp*, 241 Mich App 665, 668 (2000); see also MCR 2.116(G)(2) and (5). After review, [i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.” MCR 2.116(I)(1).

ARGUMENT

I. This Court lacks subject matter jurisdiction over Counts III and IV of Plaintiff’s amended complaint.

As will be explained below, this Court lacks subject matter jurisdiction over Plaintiff’s ADA and Rehabilitation Act claims because there is no legislation that confers jurisdiction on the circuits over such claims against the state. When a court lacks subject matter jurisdiction in a matter, dismissal is required under MCR 2.116(C)(4).

Subject matter jurisdiction “is defined as the court’s ability ‘to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending.’” *Campbell v St John Hosp*, 434 Mich 608, 613–14 (1990). In Michigan, the subject matter jurisdiction of the circuit courts is set by Article 6, § 13 of the 1963 Michigan Constitution which provides that “[t]he circuit court shall have original jurisdiction in all matters *not prohibited by law*.” (Emphasis added). The Supreme Court has interpreted Article 6, § 13’s predecessor provisions in earlier Constitutions as providing the “Legislature [with] the right only to determine what causes may be instituted in the circuit courts.” *Mooney v Unemployment Comp Comm*, 336 Mich 344, 353 (1953). Consistent with this right, the Legislature enacted MCL 600.605 which provides:

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

Stated differently, “the circuit court is presumed to have subject-matter jurisdiction over a civil action unless Michigan’s Constitution or a statute expressly prohibits it from exercising jurisdiction or gives to another court exclusive jurisdiction over the subject matter of the suit.” *O’Connell v Dir of Elections*, 316 Mich App 91, 101 (2016).

And as to claims against the State, “it is well settled that the circuit court is without jurisdiction to entertain an action against the State of Michigan unless that

jurisdiction shall have been acquired by legislative consent.” *Greenfield Const*, 402 Mich at 194; see also *Ross v Consumers Power Co*, 420 Mich 567, 598 (1984) (“Sovereign immunity exists in Michigan because the state created the courts and so is not subject to them.”). In 1939, the State enacted the Court of Claims Act, which today “stands as this state’s controlling legislative expression of waiver of the state’s sovereign immunity from direct action suit against it and its agencies and of their submission to the jurisdiction of a court.” *Greenfield Const*, 402 Mich at 195 (1978). Such waivers of sovereign immunity “must be strictly interpreted.” *Pohutski v City of Allen Park*, 465 Mich 675, 681 (2002).

A. The Court of Claims has exclusive jurisdiction over all claims against the State subject to only two exceptions that do not vest this Court with jurisdiction over Plaintiff’s federal claims.

The Legislature specifically provided that the Court of Claims has exclusive jurisdiction over all claims against the State. In particular, the Court of Claims has “exclusive jurisdiction”

[t]o *hear and determine any claim or demand* statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ *against the state or any of its departments or officers* notwithstanding another law that confers jurisdiction of the case in the circuit court. [MCL 600.6419(1)(a) (emphasis added).]

This language is unambiguous and must be enforced as written. *Tryc v Michigan Veterans’ Facility*, 451 Mich 129, 135–136 (1996). The term “exclusive” means “not divided or shared with others [or] single or independent; sole.” *Charter Twp of Northville v Northville Pub Sch*, 469 Mich 285, 292 (2003). In other words, the

State's "submission" to the exclusive jurisdiction of the Court of Claims means that it only submitted to the jurisdiction of the Court of Claims—not the circuit courts.

MCL 600.6419 additionally provides that the Court of Claims's exclusive jurisdiction is subject to two exceptions which do not provide this Court with jurisdiction over Plaintiff's ADA and Rehabilitation Act claims. The first exception is found in MCL 600.6421 which provides in pertinent part that the Court of Claims Act does not "deprive[] the circuit, district, or probate court of jurisdiction to hear and determine a claim for which there is a right to a trial by jury *as otherwise provided by law.*" MCL 600.6421(1) (emphasis added).¹ The second exception is found in MCL 600.6440 which provides in pertinent part that "[n]o claimant may be permitted to file claim in [the Court of Claims] against the state . . . who has an adequate remedy upon his claim in the federal courts." For reasons explained below, neither exception vests this Court with jurisdiction over Plaintiff's federal claims.

- 1. The Legislature has not subjected the State to the jurisdiction of the circuit courts for claims arising under federal law.**

The Court of Appeals in *Doe v Dep't of Transportation*, recently determined that because the Legislature included the state within the definition of "person" under the Elliott-Larsen Civil Rights Act (ELCRA), "[t]he express language of the

¹ Generally, when the phrase "provided by law" appears in Michigan statutes or constitutional provisions, it refers to Michigan's Legislature—not Congress. See e.g., *Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich 83, 94 (2011).

[ELCRA] . . . [demonstrates that] the Legislature intended to submit the state to the jurisdiction of the circuit court.” No 338999, 2018 WL 2121739, at *4 (May 8, 2018), Exhibit 1. The Court of Appeals further noted that because “the court rules governing circuit court[s] allow a party seeking money damages ‘to be tried by a jury upon request’ . . . the Legislature consented that the state may be tried by a jury in’ ELCRA cases.” *Id* at *5, citing *Anzaldua v Band*, 457 Mich 530, 553–54 (1998) (emphasis added). For this reason, the Court ultimately ruled that “the Court of Claims had concurrent jurisdiction with the circuit court by virtue of MCL 600.6421(1).” *Id* at *6. Here, unlike the ELCRA claims involved in *Doe*,² there is no evidence, statutory or otherwise, that the Legislature intended to submit the state to the jurisdiction of the circuit court in ADA or the Rehabilitation Act cases.

Additionally, *O’Connell v Director of Elections*, 316 Mich App 91 (2016), further demonstrates that MCL 600.6421 does not vest jurisdiction in the circuit courts. In *O’Connell*, the Court of Appeals rejected the argument that MCL 600.6419(6)—which provides that the Court of Claims Act “does not deprive the circuit court of exclusive jurisdiction to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963”—“reserves for the circuit court ‘exclusive’ jurisdiction over mandamus actions involving state officers.” *O’Connell*, 316 Mich App at 104. In rejecting this argument, the Court of Appeals held that the phrase “does not deprive” as it

² The Department of Transportation has filed a claim of appeal in the Supreme Court which has yet to be addressed by the Court.

appears in MCL 600.6419(6) cannot be construed as “affirmatively *conferring* exclusive jurisdiction to the circuit court that it has never possessed.” *O’Connell*, 316 Mich App 91 at 104.

Here too, the phrase “does not deprive” as it appears in MCL 600.6421(1) does not *confer* jurisdiction on the circuit courts over federal claims against the state for which there is a right to trial by jury. Thus, the rule expressed in *Greenfield Construction*—that “the circuit court is without jurisdiction to entertain an action against the State of Michigan unless that jurisdiction shall have been acquired by legislative consent”—controls, and this Court lacks subject matter jurisdiction over Counts III and IV of Plaintiff’s amended complaint. *Greenfield Const*, 402 Mich at 194.

2. MCL 600.6440 bars jurisdiction over Plaintiff’s federal claims in the Court of Claims only—it has no impact on this Court’s lack of subject matter jurisdiction.

Once again, “the circuit court[s] are without jurisdiction to entertain an action against the State of Michigan unless that jurisdiction shall have been acquired by legislative consent.” *Greenfield Const*, 402 Mich at 194. The State submitted itself to the jurisdiction to the exclusive jurisdiction of the Court of Claims when the Legislature enacted the Court of Claims Act in 1939, *Greenfield Construction*, 402 Mich at 195, and Michigan Courts have ruled that the state submitted itself to the jurisdiction of the circuit courts for certain claims brought under state law. See, e.g., *Doe v Dep’t of Transp*, at *5-6 and *Anzaldua*, 457 Mich at 553-54. Notably, prior to the enactment of the Court of Claims Act, the state could not be sued. *Greenfield Const*, 402 Mich at 197.

MCL 600.6440 simply provides that “[n]o claimant may be permitted to file [a] claim in [the Court of Claims] against the state . . . who has an adequate remedy upon his claim in the federal courts.” As to questions of statutory interpretation in Michigan, it is well established that “[i]f the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.” *Whitman v City of Burton*, 493 Mich 303, 311 (2013). What is more, the provisions of the Court of Claims in particular must be strictly and narrowly interpreted. See *Manion v State*, 303 Mich 1, 19 (1942) (“[A]ny relinquishment of sovereign immunity must be strictly interpreted.”).

When interpreting MCL 600.6440, its title alone—“remedy in federal court as bar to jurisdiction”—unambiguously illustrates its impact on the Court of Claims jurisdiction over claims with remedies available in the federal courts. And because there is no language within MCL 600.6440 to the contrary, the statute cannot be read as conferring jurisdiction to the circuit courts over such federal claims against the state. See *Whitman*, 493 Mich at 311.

While Michigan courts have not had frequent opportunities to analyze MCL 600.6440, several federal courts have had the opportunity to review the statute. See, e.g., *Ewing v Bd of Regents of the Univ of Mich*, 552 F Supp 881, 884 (ED Mich 1982) (rejecting the argument that MCL 600.6440 “must be read to establish waiver in the federal courts,” and opining that Section 6440 merely “dictates an order of procedure *only* with respect to those cases for which federal amenability to suit has already been established.”); *Freed v Thomas*, No 17-cv-13519, 2018 WL 1964669, at

*3 (ED Mich 2018), Exhibit 2 (finding that Section 6440 simply “expresses a preference that federal claims be litigated in federal court.”). Ultimately, MCL 600.6440 must be enforced as written.

B. Michigan has not created, and it is not required to create, a court of competent jurisdiction to entertain federal claims made against the state.

Should there be a question what Michigan court would have subject matter jurisdiction over federal claims against the state, the answer, simply put, is that no Michigan court has jurisdiction over such claims. It is true that under the Supremacy Clause of the United State Constitution, federal law “shall be the supreme Law of the Land” and is “enforceable in every State,” *New York v United States*, 505 US 144, 178 (1992), quoting US Const, art VI. There is also a presumption that state courts have concurrent jurisdiction over federal claims with the lower federal courts. See, e.g., *Haywood v Drown*, 556 US 729, 746 (2009). However, notwithstanding the presumption of concurrency, the Supremacy Clause does not “require[] that the State create a court competent to hear [a] case in which [a] federal claim is presented.” *Howlett By & Through Howlett v Rose*, 496 US 356, 372 (1990). Rather, it is a general rule, “bottomed deeply in belief in the importance of state control of state judicial procedure, . . . that federal law takes the state courts as it finds them.” *Id.*

Here too, in accordance with this general rule, Plaintiff’s claims under the ADA and the Rehabilitation Act take Michigan courts as the federal claims find them. And Plaintiff’s federal claims find Michigan with one court that possesses exclusive jurisdiction over all claims without available federal remedies against the

state, see MCL 600.6419 and *Greenfield Construction*, 402 Mich at 195, and certain civil rights statutes that place jurisdiction in the circuit courts over claims made against the state under those respective civil rights statutes. See, e.g., *Anzaldua*, 457 Mich at 553–554. In other words, Plaintiff’s ADA and Rehabilitation Act claims find Michigan law without a court of competent jurisdiction to hear such claims. Therefore, the only courts competent to hear Counts III and IV of Plaintiff’s amended complaint are the federal courts.

II. Because this both this Court and the Court of Claims lack jurisdiction over Plaintiff’s federal claims, dismissal is required.

Ordinarily, when a circuit court lacks subject matter jurisdiction over a claim against the state, the state could transfer the claim to the Court of Claims. MCL 600.6404(3). However, because the Court of Claims does not have jurisdiction over Counts III and IV of Plaintiff’s amended complaint, transfer under MCL 600.6404(3) is inappropriate in this instance.

As a result of both this Court and the Court of Claims lacking subject matter jurisdiction, the only appropriate action that this Court may take as to Plaintiff’s ADA and Rehabilitation Act claims is to dismiss them without prejudice. See, e.g., *Reed v Yackell*, 473 Mich 520, 548 (2005) (holding that “[w]hen a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void.”); see also *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 399 (2002) (holding that “[b]ecause a court is continually obliged to question sua sponte its own jurisdiction over . . . the subject matter of an action . . . it was the trial court’s duty to take notice of its lack of subject-matter jurisdiction

and dismiss plaintiff's claim . . . pursuant to MCR 2.116(C)(4)." (internal citations omitted).

RELIEF REQUESTED

For the reasons expressed above in the motion and brief, this Court lacks subject matter jurisdiction over Plaintiff's claims brought under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Thus, dismissal under MCR 2.116(C)(4) of Counts III and IV of Plaintiff's amended complaint is required.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Kendell S. Asbenson
Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorneys for Defendants
Civil Litigation, Employment &
Elections Division
P.O. Box 30217
Lansing, MI 48909
(517) 373-6434
asbensonk1@michigan.gov

Dated: October 17, 2018

PROOF OF SERVICE

On October 17, 2018, I electronically filed the foregoing papers with the Wayne County Circuit Court using the MiFile system, which will provide electronic copies to counsel of record, and I certify that my secretary has mailed by U.S. Postal Service the papers to any non-MiFile participant.

/s/ Kendell S. Asbenson
Kendell S. Asbenson
Assistant Attorney General
Attorney for Defendants
asbensonk1@michigan.gov

Olden v State of Michigan, et al
Wayne County Circuit Court, Case No. 18-001424-CD
Honorable Dana M. Hathaway

EXHIBIT 1

RECEIVED by MSC 12/20/2021 4:03:47 PM

18-001424-CD FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 10/17/2018 3:28 PM Jacquetta Parkinson

2018 WL 2121739

Only the Westlaw citation is currently available.
Court of Appeals of Michigan.

Jane DOE, Plaintiff–Appellee,

v.

DEPARTMENT OF TRANSPORTATION,
Defendant–Appellant.

No. 338999

May 8, 2018, 9:05 a.m.

Synopsis

Background: Employee filed complaint, which included a jury demand, against Department of Transportation, alleging she was sexually harassed by her manager in violation of the Elliot-Larsen Civil Rights Act (ELCRA). After Department filed notice of transfer to Court of Claims, the Court of Claims, No. 17-000149-MZ, granted employee's motion to transfer the case back to the circuit court, denied as moot Department's motion for summary disposition, and denied employee's motion for sanctions. Department appealed the granting of employee's motion to transfer and the denying of Department's motion for summary disposition.

The Court of Appeals, held that state's immunity from jury trial was waived under ELCRA.

Affirmed.

Court of Claims LC No. 17-000149-MZ

Before: Shapiro, P.J., and M. J. Kelly and O'Brien, JJ.

Opinion

Per Curiam.

*1 Defendant appeals as of right the opinion and order of the Court of Claims granting plaintiff's motion to transfer the case back to the circuit court, denying as moot defendant's motion for summary disposition, and denying plaintiff's motion for sanctions. Defendant only appeals the order with respect to its granting plaintiff's motion

to transfer and denying defendant's motion for summary disposition. We affirm.

Plaintiff filed her original complaint on August 31, 2015, in circuit court alleging that, while employed by defendant, she was sexually harassed by her manager in violation of the Elliot–Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* On April 21, 2016, plaintiff filed a first amended complaint alleging sexual harassment and illegal retaliation by defendant in violation of the ELCRA. Both complaints included a jury demand. On May 25, 2017, defendant filed a notice of transfer to the Court of Claims, “effective immediately,” pursuant to MCL 600.6404(3). On the same day, defendant filed a motion for summary disposition under MCR 2.116(C)(7) arguing it was entitled to summary disposition because plaintiff failed to comply with the requirements for filing in the Court of Claims.

On June 5, 2017, plaintiff filed an emergency motion to transfer the case back to the circuit court, arguing that the jury-trial exception in MCL 600.6421(1) to the exclusive jurisdiction of the Court of Claims applied. In response to plaintiff's motion, defendant argued that the jury-trial exception did not apply because plaintiff was not entitled to a jury trial in an action under the ELCRA against a state defendant.

On June 20, 2017, the Court of Claims issued its opinion. The court found that it was “well established in this state's jurisprudence that [plaintiff] enjoys” the right to a jury trial in an action under the ELCRA and that Michigan's appellate courts had extended this right “to claims against the state or state agencies.” The Court of Claims concluded that, because a jury-trial right existed in this case, the circuit court and the Court of Claims had concurrent jurisdiction. Accordingly, the court granted plaintiff's motion for transfer to the circuit court and denied as moot defendant's motion for summary disposition.

This appeal followed.

Defendant argues that the Court of Claims erred by transferring the case back to the circuit court because the Court of Claims had exclusive jurisdiction. MCL 600.6419(1) states, “Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon this chapter, is exclusive.” If an exception

does not apply, then the Court of Claims has exclusive jurisdiction over this action pursuant to MCL 600.6419(1)(a).¹ The only exception that may apply to the Court of Claims's exclusive jurisdiction is MCL 600.6421(j), which provides in pertinent part as follows:

Nothing in this chapter eliminates or creates any right a party may have to a trial by jury, including any right that existed before November 12, 2013. Nothing in this chapter deprives the circuit, district, or probate court of jurisdiction to hear and determine a claim for which there is a right to a trial by jury as otherwise provided by law, including a claim against an individual employee of this state for which there is a right to a trial by jury as otherwise provided by law. Except as otherwise provided in this section, if a party has the right to a trial by jury and asserts that right as required by law, the claim may be heard and determined by a circuit, district, or probate court in the appropriate venue.

*2 If plaintiff had the right to a jury trial in her case against defendant, defendant does not contest that transfer back to the circuit court was otherwise proper.

¹ MCL 600.6419(1)(a) states that the Court of Claims has jurisdiction

[t]o hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

On appeal, defendant concedes that a right to a jury trial exists under the ELCRA, but argues that this right does not extend to *state* defendants. Defendant contends that, because a plaintiff does not have an established right to a jury trial in an action under the ELCRA when the state is the defendant, the Court of Claims had exclusive jurisdiction. This argument fails because the question is not whether a plaintiff enjoys the right to a jury trial

against a state defendant in an action under the ELCRA; plaintiffs already enjoy the right to a jury trial under the ELCRA. The proper inquiry is whether the Legislature waived the state's immunity from jury trial in the ELCRA.

A challenge to the jurisdiction of the Court of Claims requires interpretation of the Court of Claims Act, which presents a statutory question reviewed de novo. *Parkwood Ltd. Dividend Housing Ass'n v. State Housing Dev. Auth.*, 468 Mich. 763, 767, 664 N.W.2d 185 (2003). The availability of governmental immunity presents a question of law that is reviewed de novo. *Norris v. Lincoln Park Police Officers*, 292 Mich. App. 574, 578, 808 N.W.2d 578 (2011). "Issues of statutory interpretation are questions of law that are reviewed de novo." *Klooster v. City of Charlevoix*, 488 Mich. 289, 295, 795 N.W.2d 578 (2011).

* "The State, as sovereign, is immune from suit save as it consents to be sued, and any relinquishment of sovereign immunity must be strictly interpreted." *Ross v. Consumers Power Co.*, 420 Mich. 567, 601, 363 N.W.2d 641 (1984), quoting *Manion v. State*, 303 Mich. 1, 19, 5 N.W.2d 527 (1942).

In addressing the issue before us, we find instructive our Supreme Court's reasoning in *Anzaldúa v. Band*, 457 Mich. 530, 578 N.W.2d 306 (1998).² *Anzaldúa* involved the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.* After finding that a plaintiff had a statutory right to a jury trial in an action under the WPA, the Michigan Supreme Court addressed the argument of the defendant Michigan State University (MSU) that "even if a jury right exists generally under the act, MSU is immune from suit before a jury because it is an arm of the state." *Anzaldúa*, 457 Mich. at 550, 578 N.W.2d 306. Our Supreme Court rejected this argument, reasoning as follows:

Defendant has confused the test we use to determine whether the state is immune from *liability* with the test used for determining whether the state is immune from *suit*. As the Court noted in *Ross v. Consumers Power Co. (On Rehearing)*, the state's sovereign immunity from liability and its immunity from suit are not the same.

Defendant MSU and amici curiae argue that the state's sovereign immunity from a trial by jury can be waived only by "express statutory enactment or by necessary inference from a statute." They are incorrect. The quoted language comes from this Court's opinion in

Mead v. Public Service Comm., 303 Mich. 168, 173, 5 N.W.2d 740 (1942). In *Mead*, we examined portions of the motor vehicle law, 1929 CL 4724. In ruling on *Mead*, we overturned one of our own prior decisions, *Miller v. Manistee Co. Bd. of Rd. Comm'rs*, 297 Mich. 487, 298 N.W. 105 (1941). We held that *Miller* had given the language of the motor vehicle law too broad a construction when it extended liability to the state. *Mead, supra* at 172–173, 5 N.W.2d 740.

*3 In *Miller*, the Court had construed the motor vehicle law to waive the state's immunity from liability as the owner of a vehicle. *Id.* at 490, 298 N.W. 105. However, the motor vehicle law made only the *driver* of a vehicle liable. The act provided:

“The provisions of this act applicable to the drivers of vehicles upon the highways, shall apply to the drivers of all vehicles owned or operated by this State or any county, city, town, district or any other political subdivision of the State subject to such specific exceptions as are set forth in this act.” [*Mead, supra* at 172–173, 5 N.W.2d 740, quoting 1929 CL 4724.]

In overruling *Miller*, the Court in *Mead* explained:

It is sufficient to note that the above-quoted portion of the statute by its express terms affects only the duties and liabilities of drivers. It does not enlarge or modify the duties or liabilities of the State as owner of a motor vehicle. [*Id.* at 173, 5 N.W.2d 740.]

The motor vehicle law did not, by its express terms or by necessary implication, provide liability for the state as an owner. Therefore, we held that the state had not waived its immunity to liability. *Id.* at 173–174, 5 N.W.2d 740.

The Whistleblowers' Protection Act satisfies the *Mead* test for waiver of immunity from liability. The Legislature expressly applied the act to the state by including the state and its political subdivisions in the definition of “employer.” See MCL 15.361(b); MSA 17.428(1)(b). Because the state is expressly named in the act, it is within the act's coverage.

However, *Mead* does not provide a test for determining whether a jury right exists against the state. The Court of Appeals dissent cited *Mead* for the proposition that the state's immunity from suit before a jury could

be waived only by express statutory enactment or by necessary inference. [*Anzaldua v. Band*, 216 Mich. App. 561, 590, 550 N.W.2d 544 (1996)] (O'CONNELL, J., dissenting). However, *Mead* does not concern the state's immunity from suit. Rather, the state was subject to suit in the Court of Claims, and we held merely that it was immune from liability under the act involved in that case. As we noted above, immunity from suit and immunity from liability are distinct matters. See *Ross, supra* at 601, 363 N.W.2d 641.

Thus, the language from *Mead* to the effect that the state waives immunity only by express statutory enactment or by necessary inference applies only to the state's immunity from liability. It has no application to the state's immunity from suit, or to immunity from trial before a jury, which is at issue here.

The rule for immunity from suit was recognized by this Court in *Ross*: “The State, as sovereign, is immune from suit save as it consents to be sued, and any relinquishment of sovereign immunity [from suit] must be strictly interpreted ...” *Id.* at 601, 363 N.W.2d 641, quoting *Manion v. State Hwy. Comm'r*, 303 Mich. 1, 19–21, 5 N.W.2d 527 (1942).

The Legislature created the Court of Claims in 1939, permitting the state to be sued before a judge. *Ross, supra* at 600, 363 N.W.2d 641. The broad language of the act creating the Court of Claims mandates that suits against the state for money damages are typically brought in that forum. *Id.* See MCL 600.6419; MSA 27A.6419.

As *Ross* makes clear, the Legislature was free when enacting the Whistleblowers' Protection Act to waive the state's immunity from suit. *Ross, supra* at 601, 363 N.W.2d 641. Section 3 of the act allows suit to be brought in the circuit courts. The statute specifically includes the state among the bodies to be regulated by defining “employers” subject to the act to include the state and its political subdivisions. Nothing in the act suggests that the state is not to be treated the same as a business for purposes of the act's protection of noncivil service employees like the plaintiff. We find it significant that the Legislature chose to subject the state to suit in the circuit court rather than in the Court of Claims.

*4 The express language of the act indicates that the Legislature intended to submit the state to the jurisdiction of the circuit court. As indicated above, the

court rules govern in civil actions in circuit court. They provide that legal actions for money damages are to be tried by a jury upon request. Hence, it necessarily follows, the Legislature consented that the state may be tried by a jury in Whistleblowers' Protection Act cases.

We uphold the result reached by the Court of Appeals on the question whether the case against MSU may be tried by a jury. We find that MSU is subject to a trial by jury under the Whistleblowers' Protection Act as provided by the court rules, generally. Plaintiff is entitled to a jury in her suit against both defendants. [*Anzaldua*, 457 Mich. at 550–554, 578 N.W.2d 306 (footnote omitted; some alterations in original).]

2 This Court has twice held that a plaintiff has the right to a jury trial when proceeding against a state defendant under the ELCRA. See *Barbour v. Dep't of Social Servs.*, 172 Mich. App. 275, 279–281, 431 N.W.2d 482 (1988); *Marsh v. Dep't of Civil Serv.*, 142 Mich. App. 557, 569–570, 370 N.W.2d 613 (1985). As published decisions of the Court of Appeals, the Court of Claims was required to follow these cases. See MCR 7.215(C)(2); *People v. Mitchell*, 428 Mich. 364, 369–370, 408 N.W.2d 798 (1987) (explaining vertical stare decisis). However, both cases were decided before our Supreme Court's decision in *Anzaldua*, and neither case expressly addressed whether the Legislature waived the state's immunity from jury trial. Although these cases are not binding on this Court because they were published before November 1, 1990. MCR 7.215(J)(1), they may be persuasive. *In re Stilwell Trust*, 299 Mich. App. 289, 299 n. 1, 829 N.W.2d 353 (2012).

The WPA is constructed similarly to the ELCRA, see *id.* at 545–548, 578 N.W.2d 306, and, therefore, we find our Supreme Court's interpretation of the WPA to be instructive for how the ELCRA should be interpreted. To reiterate, defendant concedes on appeal that a jury-trial right generally exists under the ELCRA. But like MSU in *Anzaldua*, defendant in this case argues that it is not subject to jury trial because it is an arm of the state. And like MSU's argument in *Anzaldua*, defendant's argument fails.

Pursuant to MCL 37.2202,

- (1) An employer shall not do any of the following:
- (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with

respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [3]

Pursuant to MCL 37.2201(a), “ ‘Employer’ means a person who has 1 or more employees, and includes an agent of that person.” MCL 37.2103 provides:

As used in this act:

(g) “Person” means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, *the state or a political subdivision of the state or an agency of the state*, or any other legal or commercial entity.

(h) “Political subdivision” means a county, city, village, township, school district, or special district or authority of the state. [Emphasis added.]

Based on the foregoing, “[t]he Legislature expressly applied the act to the state by including the state and its political subdivisions in the definition” of “person.” *Anzaldua*, 457 Mich. at 551, 578 N.W.2d 306. Relevant to the case before us, the Legislature defined “employer” as “a person” with one or more employees. MCL 37.2201(a). Therefore, like the WPA, the ELCRA satisfies “the *Mead* test for waiver of immunity from liability.” *Id.* at 551, 578 N.W.2d 306. This conclusion is well grounded in our caselaw. See *Manning v. City of Hazel Park*, 202 Mich. App. 685, 699, 509 N.W.2d 874 (1993) (“Concerning the sex and age discrimination claims, defendants do not have a governmental immunity defense because the Civil Rights Act specifically includes state and political subdivisions and their agents as employers covered by the act.”); *John Does 11–18 v. Dep't of Corrections*, — Mich. App. —, —; — N.W.2d — (2018) (Docket Nos. 332536, 335440, 335527); slip op. at 8, 2018 WL 1512432 (“Contrary to defendants' assertions, the law is clear that governmental immunity does not apply to ELCRA claims.”); *In re Bradley Estate*, 494 Mich. 367, 393 n. 60, 835 N.W.2d 545 (2013).

3 Pursuant to MCL 37.2103(i), “Discrimination because of sex includes sexual harassment.”

*5 However, this does not resolve whether the Legislature in the ELCRA waived the state’s “immunity from suit, or to immunity from trial before a jury, which is at issue here.” *Anzaldua*, 457 Mich. at 552, 578 N.W.2d 306. A cause of action under the ELCRA is provided in MCL 37.2801, which states as follows:

(1) A person alleging a violation of this act *may bring a civil action for* appropriate injunctive relief or damages, or both.

(2) *An action commenced pursuant to subsection (1) may be brought in the circuit court* for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(3) As used in subsection (1), “damages” means damages for injury or loss caused by each violation of this act, including reasonable attorney’s fees. [Emphasis added.]

When enacting the ELCRA, the Legislature was free to waive the state’s immunity from suit. See *Anzaldua*, 457 Mich. at 553, 578 N.W.2d 306. MCL 37.2202(1) prohibits discrimination by an “employer”; MCL 37.2201(a) defines an “employer” as “a person”; and MCL 37.2103(g) specifically includes the state and its political subdivisions in the definition of a “person.” It is therefore clear that the Legislature intended for the state and its political subdivisions to be regulated by and subject to the ELCRA. See *Anzaldua*, 457 Mich. at 553, 578 N.W.2d 306. MCL 37.2801(2) allows suit under the ELCRA to be brought in circuit court. Nothing in the ELCRA indicates that the state is to be treated different from any other employer, indicating that “the Legislature chose to subject the state to suit in the circuit court rather than in the Court of Claims.” *Anzaldua*, 457 Mich. at 553, 578 N.W.2d 306. Therefore, based on “[t]he express language of the act ... the Legislature intended to submit the state to the jurisdiction of the circuit court.” *Id.* And the court rules governing circuit court allow a party seeking money damages “to be tried by a jury upon request.” *Id.* “Hence, it necessarily follows, the Legislature consented that the state may be tried by a jury in” ELCRA cases. *Id.* at 553–554, 578 N.W.2d 306. In other words, the Legislature waived the state’s immunity from jury trial in actions brought under the ELCRA.

Defendant argues that *Anzaldua* employed improper reasoning and was ultimately wrongly decided. Whatever issues defendant may take with *Anzaldua*, “it is the Supreme Court’s obligation to overrule or modify case law if it becomes obsolete, and until [that] Court takes such action, the Court of Appeals and all lower courts are bound by that authority.” *State Treasurer v. Sprague*, 284 Mich. App. 235, 242, 772 N.W.2d 452 (2009) (quotation marks and citation omitted; alteration in original); see also *People v. Mitchell*, 428 Mich. 364, 369–370, 408 N.W.2d 798 (1987).

Defendant also contends on appeal that *Anzaldua*’s “persuasive value” was “undercut” by the enactment of 2013 PA 164 because that act “abrogated the primary rationale for affording plaintiffs a right to a jury—the ELCRA’s grant of jurisdiction to the circuit courts.” This is apparently a reference to MCL 600.6419, which defendant argues “[b]y its plain terms ... superseded MCL 37.2801(2), which granted circuit court jurisdiction over ELCRA claims.”

Defendant’s argument fatally ignores MCL 600.6421(1). By its plain language, MCL 600.6419 is expressly subject to MCL 600.6421. See MCL 600.6419(1) (“Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive.”). MCL 600.6421(1) states that “[n]othing in this chapter eliminates ... any right a party may have to a trial by jury.” Therefore, pursuant to MCL 600.6421(1), the Court of Claims’s expanded jurisdiction in MCL 600.6419 cannot be construed to deprive a party of an existing right to a jury trial.

*6 Accordingly, because plaintiff was entitled to a jury trial against defendant in her action under the ELCRA, the Court of Claims had concurrent jurisdiction with the circuit court by virtue of MCL 600.6421(1). Therefore, the Court of Claims did not err by transferring the case back to the circuit court.⁴

⁴ Because the Court of Claims properly transferred the case back to the circuit court, defendant’s argument that plaintiff did not follow the procedures necessary to proceed in the Court of Claims is moot and this Court need not address it. See *BP 7 v. Bureau of State Lottery*, 231 Mich. App. 356, 359, 586 N.W.2d 117 (1998).

Affirmed.

All Citations

--- N.W.2d ----, 2018 WL 2121739

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 12/20/2021 4:03:47 PM

18-001424-CD FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 10/17/2018 3:28 PM Jacquetta Parkinson

Olden v State of Michigan, et al
Wayne County Circuit Court, Case No. 18-001424-CD
Honorable Dana M. Hathaway

EXHIBIT 2

RECEIVED by MSC 12/20/2021 4:03:47 PM

18-001424-CD FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 10/17/2018 3:28 PM Jacquetta Parkinson

2018 WL 1964669

Only the Westlaw citation is currently available.

United States District Court, E.D.
Michigan, Southern Division.Donald FREED, Plaintiff,
v.
Michelle THOMAS, et al., Defendants.

Civil Action No. 17-CV-13519

Signed 04/26/2018

Attorneys and Law FirmsPhilip L. Ellison, Outside Legal Counsel PLC, Hemlock,
MI, for Plaintiff.Allan C. Vander Laan, Bradley C. Yanalunas, Cummings,
McCloy, Davis & Acho, P.L.C., Grand Rapids, MI, for
Defendants.**OPINION AND ORDER DENYING
DEFENDANTS' MOTION TO DISMISS**BERNARD A. FRIEDMAN, SENIOR UNITED
STATES DISTRICT JUDGE

*1 This matter is before the Court on defendants' motion to dismiss for lack of subject-matter jurisdiction [docket entry 6]. This motion is fully briefed. Pursuant to E.D. Mich. LR 7.1(f)(2), the Court shall decide this motion without a hearing.

The following facts are summarized from the complaint and briefing: For several decades, plaintiff owned and lived on a thirty-five acre parcel in Gratiot County, Michigan. This land is worth approximately \$100,000. From 2014 to 2015, plaintiff failed to pay almost \$2,000 in property taxes, costs, and interest. In June 2016, the Gratiot County treasurer, defendant Michelle Thomas, filed a petition in Gratiot County Circuit Court under the General Property Tax Act ("GPTA"), Mich. Comp. Laws § 211.78, to foreclose on plaintiff's property. In February 2017, the circuit court granted the petition and foreclosure, and title transferred to Gratiot County. In August 2017, defendants sold plaintiff's land for \$42,000 to cover his \$2,000 tax bill and kept the balance ("surplus

equity"). In October 2017, plaintiff filed this complaint, asserting violations of the Fifth Amendment's takings clause and Eighth Amendment's excessive-fines clause.

In November 2017, defendants filed the instant motion to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction. Defendants raise three jurisdictional challenges to plaintiff's Fifth Amendment eminent domain claim: Ripeness, The Tax Anti-Injunction Act, and Comity.¹

¹ Defendants do not mount any substantive challenge to plaintiff's Eighth Amendment claim separate from the jurisdictional arguments. Consequently, the Court will treat them together.

Ripeness. The Court has jurisdiction over eminent domain claims only if they are ripe. *Bigelow v. Michigan Dep't of Nat. Res.*, 970 F.2d 154, 157 (6th Cir. 1992). For a claim challenging a state action to be ripe, plaintiff must show both that the state government decision was final and that there are no available state court remedies. *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 194 (1985). Here, plaintiff adequately shows both.

A state government decision is final when "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Id.* at 186. Here, Gratiot County implements the GPTA, has already sold plaintiff's property to cover his back taxes, and refuses to remit the surplus equity. This appears to be a final decision under *Williamson*.

In addition to showing finality, a plaintiff must first "seek compensation through the procedures the State has provided for doing so." *Williamson*, 473 U.S. at 194. This analysis looks to potential "remedies under state substantive law." 13B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3532.1 n.43 (3d ed. 2014). But critically, plaintiff must adhere to this requirement only if the potential remedies are "reasonable, certain, and adequate." *Williamson*, 473 U.S. at 194. Merriam-Webster's Dictionary 367 (3d ed. 1986) defines the word certain as "fixed," "settled," or "sure."

*2 Here, defendants believe that inverse condemnation is a sufficient state law remedy. Plaintiff conversely argues that the doctrine of inverse condemnation does not apply

here, or, at the very least, it is not certain that it does. The Court agrees with plaintiff. Were he to file this suit in state court, he would face significant substantive and jurisdictional problems.

Turning first to the substantive problems: Michigan has long recognized the right of inverse condemnation. *Hart v. City of Detroit*, 331 N.W.2d 438, 441 (Mich. 1982). As a general rule, though, inverse condemnation claims recover property that the government has taken under its taxing power, not its eminent domain power. See *Merkur Steel Supply, Inc. v. City of Detroit*, 680 N.W.2d 485, 494 (Mich. Ct. App. 2004) (“An inverse condemnation suit is one instituted by a private property owner whose property, while not formally taken for public use, has been damaged by a public improvement undertaking or other public activity.”). Consequently, Michigan courts rarely countenance inverse condemnation claims to remedy an abuse of the taxing power, which is the kind of claim at issue here. And when they do, it is only in the context of general taxing power excesses, not of GPTA foreclosure sales. *Wayside Church v. Van Buren Cty.*, 847 F.3d 812, 823 (6th Cir. 2017) (Kethledge, J., dissenting) (stating that no Michigan court has “determined, as a matter of state law, whether a local government’s appropriation of property pursuant to the taxing power generally, or to the [GPTA] in particular, is a taking to the extent the government takes property worth more than the amount of taxes owed”).

The Michigan Court of Appeals further solidified these points in *Rafaelli, LLC v. Oakland Cty.*, No. 330696, 2017 WL 4803570 (Mich. Ct. App. Oct. 24, 2017) [hereinafter *Rafaelli I*]. Just like here, the plaintiff in *Rafaelli I* brought an eminent domain challenge to a county’s taking of the tax foreclosure sale’s surplus equity, 2017 WL 4803570, at *1–2. In denying his claim, the court stated:

The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. Defendants obtained the property by way of a statutory scheme that did not violate due process. The constitution does not require them

to compensate plaintiffs for the lawfully-obtained property.

Id. at *4 (internal quotation marks and citations omitted). In other words, because the county took the plaintiff’s property via the GPTA and did not violate due process, the plaintiff had no claim under either eminent domain or inverse condemnation.

Here, like *Rafaelli I*, the statutory scheme defendants used is the GPTA and there is no serious due process claim. If the Michigan Court of Appeals would not recognize the *Rafaelli I* plaintiff’s claim, is it really settled or sure that Michigan would recognize the instant plaintiff’s identical claim? The Court believes not. *Rafaelli I* casts serious doubt on the notion that plaintiff could use inverse condemnation to obtain the surplus equity at issue here.

The Court notes that there is pre-*Rafaelli I* case law in this circuit that runs counter to this conclusion. *Wayside and Rafaelli, LLC v. Wayne Cty.*, No. 14-13958, 2015 WL 3522546, at *1 (E.D. Mich. June 4, 2015) [hereinafter *Rafaelli*] both held in very similar cases that the Court did not have jurisdiction over this kind of claim. The Court believes these cases are distinguishable because they both hinged on the assumption that Michigan courts provide a plaintiff with plain, speedy, efficient, reasonable, certain, and adequate remedies at law. In the Court’s view, *Rafaelli I* put that idea to rest.

*3 Indeed, the Court adds its voice to the growing chorus of judges concerned about these kinds of claims, which appear in federal court because there is no adequate remedy at state law. *Rafaelli I*, 2017 WL 4803570, at *6 (Shapiro, J., concurring) (recognizing “that plaintiffs’ claims call out for relief” notwithstanding the court’s decision to deny it; quoting at length Judge Berg’s concern in *Rafaelli* that this was a “manifest injustice” and an “abuse of power”; and citing Judge Kethledge’s *Wayside* dissent where he called this county practice a “gross injustice—both equitably, and from the standpoint of the interests protected by takings law”).

Defendants insist that Michigan courts do recognize that inverse condemnation principles “apply to land subject to a tax foreclosure.” Defs.’ Mot. p. 4. In support, they cite *Ligon v. City of Detroit*, 739 N.W.2d 900, 905 (Mich. Ct. App. 2007), and *Hart*, 331 N.W.2d at 438. But neither of these cases applies here. In *Ligon*, the plaintiff was not actually part of the tax

foreclosure proceedings, so his property rights were never extinguished. *Ligon*, 739 N.W.2d at 906. Consequently, when the government demolished his building in error he still had full ownership interest in the building, and the demolition was clearly a taking. *Id.* But *Rafaelli I* held that once a tax foreclosure proceeding that complies with due process concludes, a plaintiff has no rights in the foreclosed property, notwithstanding any claim to surplus equity. Thus, plaintiff's claim is entirely different than the claim in *Ligon*. And in *Hart*, the Michigan Supreme Court discussed inverse condemnation only in the context of the statute of limitations. Neither opinion alludes to the GPTA or anything like surplus equity. In sum, in light of *Rafaelli I*, if plaintiff were to bring his claim in a Michigan court, he would face significant substantive problems.

Turning second to the jurisdictional problems. Even if plaintiff could be certain that he has a recognized cause of action, it is not clear in which Michigan court he could pursue his claim against defendant Gratiot County. On the one hand, the Court of Claims seems appropriate. Under Mich. Comp. Laws § 600.6419, the Court of Claims has "exclusive ... jurisdiction: (a) To hear and determine any claim or demand, statutory or constitutional. ... or any demand for monetary, equitable, or declaratory relief ... against the state." Some Michigan Court of Appeals cases treat counties as instrumentalities of the state and, therefore, hold that the Court of Claims has jurisdiction over claims against counties. *See, e.g., Wayne Cty. Bd. of Comm'rs v. Wayne Cty. Airport Auth.*, 658 N.W.2d 804, 828 (Mich. Ct. App. 2002) (holding that counties are "political subdivisions and instrumentalities of the state"); *Pomann, Callanan & Sofen, P.C. v. Wayne Cty. Dep't of Soc. Servs.*, 419 N.W.2d 787, 789 (Mich. Ct. App. 1988) (stating that § 600.6419's "exclusive jurisdiction encompasses all claims against the state and its instrumentalities," and holding that Wayne County was such an instrumentality). Further, the Michigan Court of Appeals has gone so far as to say that "[t]he Court of Claims is the proper forum in which to seek redress where a plaintiff alleges an already accomplished inverse condemnation." *Lim v. Mich. Dep't of Transp.*, 423 N.W.2d 343, 345 (Mich. Ct. App. 1988).

Other authority suggests that the Court of Claims is not the proper forum. Mich. Comp. Laws § 600.6440 states that the Court of Claims does not have jurisdiction over a plaintiff who has an "adequate remedy upon his claim in the federal courts." This expresses a preference that

federal claims be litigated in federal court. As plaintiff has filed a Fifth Amendment eminent domain claim under 42 U.S.C. § 1983 to vindicate his federal rights, and the Court adjudicates such claims, it appears that he has a remedy in the federal courts, which deprives the Court of Claims of jurisdiction. *Wayside* dicta, too, suggests that the proper forum for an inverse condemnation claim is the Circuit Court. 847 F.3d at 821 (examining *Gordon v. Sadasivan*, 373 N.W.2d 258 (Mich. Ct. App. 1985) (per curiam)). And puzzlingly, the Michigan Court of Appeals has held that counties "are never within the jurisdiction of the Court of Claims." *Doan v. Kellogg Cmty. Coll.*, 263 N.W.2d 357, 359 (Mich. Ct. App. 1977).

*4 Perhaps plaintiff would guess the right Michigan court in which to file his claim, and perhaps that court would hear it. But given *Rafaelli I* and the jurisdictional quandary outlined above, that result is by no means certain. Because plaintiff has "establish[ed] the inadequacy of the procedure in these circumstances"—i.e., its uncertainty—his eminent domain claim is ripe. *Macene v. MJW, Inc.*, 951 F.2d 700, 704 (6th Cir. 1991).

The Tax Anti-Injunction Act. The Tax Anti-Injunction Act, 28 U.S.C. § 1341, states: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." In *California v. Grace Brethren Church*, 457 U.S. 393, 411 (1982), the Court held that generally, § 1341 "prohibits declaratory" and "injunctive relief." Accordingly, a district court has jurisdiction to declare state "tax provision unconstitutional or to issue its injunction against state authorities" only when a plaintiff "had no plain, speedy and efficient remedy in the state courts." *Id.* A remedy is plain, speedy, and efficient if the plaintiff is given a "full hearing and judicial determination of the controversy." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981). Put another way, the Court may enjoin state tax collection only "where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law." *Grace Brethren*, 457 U.S. at 412 (quotation marks omitted).

In considering what precisely plaintiff is asking the Court to do, the Court must look to his prayers for relief. Prayers for relief (a) and (b) request that the Court enjoin enforcement of the GPTA against him and declare

it unconstitutional as applied to him. Prayers for relief (c) and (d) request that the Court enjoin defendants' "procedures" of keeping the surplus equity as that violates the Fifth, Eighth, and Fourteenth amendments. Prayers for relief (e)–(g) request nominal and punitive damages, costs and attorney fees, and other equitable relief.

The Court does not believe prayers (c) and (d) implicate § 1341 because granting them would not require the Court to enjoin, suspend, or restrain either tax collection or enforcement of the GPTA. Plaintiff admits that at the time of the foreclosure sale, he owed defendants back taxes, which the sale of his property paid for. Prayers (c) and (d) do *not* request that the Court order defendants to remit that money they used to satisfy plaintiff's tax debt. Rather, they request that the Court order defendants to remit the surplus equity. In other words, prayers (c) and (d) do not implicate tax collection or foreclosure sales, but merely whether municipalities may retain a windfall from a tax foreclosure sale. The D.C. District Court summarized this distinction succinctly in *Coleman through Bunn v. District of Columbia*, 70 F. Supp. 3d 58, 68 (D.D.C. 2014):

Mr. Coleman does not seek a court order nullifying his property tax obligation. Indeed, the District conceded at oral argument that a ruling in Mr. Coleman's favor would not allow him to avoid paying any tax.... Mr. Coleman concedes that those amounts were due; he seeks only the surplus equity that remains after those amounts are paid. Accordingly, if Mr. Coleman won this lawsuit, no 'tax' would be removed from the District's coffers. For that reason, the Tax Injunction Act does not bar his claims.

*5 See also *Hibbs v. Winn*, 542 U.S. 88, 90–91 (2004) ("This Court has interpreted and applied the TIA only in cases Congress wrote the statute to address, i.e., cases in which state taxpayers seek federal court orders enabling them to avoid paying state taxes.").

The text of the GPTA supports this conclusion. Within the context of tax foreclosures, the GPTA defines "taxes" as the initial tax bill and any additional "interest, penalties, and fees imposed before the taxes become delinquent and unpaid special assessments or other assessments that are

due and payable up to and including the date of the foreclosure hearing." Mich. Comp. Laws § 211.78a. Under this definition, the surplus equity at issue here is not "taxes." See *City of Detroit v. Kelly*, No. 280974, 2009 WL 3276348 (Mich. Ct. App. Oct. 13, 2009) (interpreting § 211.78a consistent with this opinion). Therefore, § 1341 does not bar the Court from granting prayers (c) and (d).

Prayers (a) and (b) fall squarely within § 1341 because they explicitly request that the Court hold the GPTA unconstitutional and enjoin its enforcement. Under *Grace Brethren*, however, § 1341 does not bar jurisdiction if there is no other plain, speedy, and efficient state remedy for plaintiff. Therefore, under *Rosewell*, the question becomes whether Michigan courts would give plaintiff a full hearing and judicially determine the instant controversy. For the reasons stated above, it appears that they would not. Consequently, § 1341 does not prevent the Court from adjudicating plaintiff's claims.

Principles of Comity. For all of the reasons § 1341 does not bar jurisdiction here, neither do the principles of comity. In *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 107, 116 (1981), the Court held that comity normally bars taxpayers "from asserting § 1983 actions against the validity of state tax systems in federal courts." The Court may not grant "injunctive and declaratory relief in state tax cases," or "damages relief." *Id.* The Court later clarified, however, that under *Fair Assessment* and its progeny, "state tax administration" matters need not be kept "entirely free from lower federal-court 'interference.'" Like *Grace Brethren Church*, all of them fall within § 1341's undisputed compass: All involved plaintiffs who mounted federal litigation to avoid paying state taxes (or to gain a refund of such taxes)." *Hibbs*, 542 U.S. at 90–91. In other words, principles of comity are largely guided by § 1341's principles and do not apply to plaintiffs who are not challenging a state tax system. Thus, as the gist of this action is not a challenge of Michigan's tax system—and to the extent that it is such a challenge, there is no adequate state law remedy—the principles of comity do not bar the Court's jurisdiction.

In the Court's view, the case comes down to this: Gratiot County "took property worth [\$100,000] to satisfy a [\$2,000] debt, and then refused to refund any of the difference. In some legal precincts that sort of behavior is called theft. But under the [GPTA], apparently, that

18-001424-CD FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 10/17/2018 3:28 PM Jacquetta Parkinson

behavior is called tax collection.” *Wayside*, 847 F.3d at 823 (Kethledge, J., dissenting).

***6** IT IS ORDERED that defendants' motion to dismiss is denied.

Accordingly,

All Citations

Slip Copy, 2018 WL 1964669

RECEIVED by MSC 12/20/2021 4:03:47 PM

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

FATIMA OLDEN,

No. 18-001424-CD

Plaintiff,

HON. DANA MARGARET
HATHAWAY

v

MICHIGAN DEPARTMENT OF
CORRECTIONS, STATE OF MICHIGAN,
and WARDEN PATRICK WARREN, in
his official capacity,

Defendants.

James B. Razor (P43476)
Andrew J. Laurila (P78880)
Attorneys for *Plaintiff*
Razor Law Firm, PLLC
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000
(248) 543-9050 (fax)
jbr@razorlawfirm.com
ajl@razorlawfirm.com

Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorneys for *Defendants*
Civil Litigation Employment and
Elections Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162
(517) 373-2060 (fax)
asbensonk@michigan.gov

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION
FOR SUMMARY DISPOSITION AS TO COUNTS
III AND IV OF PLAINTIFF'S AMENDED COMPLAINT**

NOW COMES Plaintiff, FATIMA OLDEN, and for her Response to Defendants' Motion for Summary Disposition as to Counts III and IV of Plaintiff's Amended Complaint, states as follows:

1. Admitted.
2. No contest.
3. No contest.
4. No contest.

5. No contest.

6. Admitted.

7. Admitted only that no Michigan statute explicitly vests this Court with subject matter jurisdiction over federal claims (including those under the ADA or Rehabilitation Act), but denied that this Court lacks subject matter over these claims for the reason that that Michigan's circuit courts are courts of general jurisdiction with wide-ranging "original jurisdiction in all matters not prohibited by law," Const 1963, art 6 § 13, including over "all civil claims and remedies," MCL § 600.605.

8. Admitted only that MCL § 600.6440 deprives the Court of Claims of jurisdiction over federal claims for which "an adequate remedy" exists in federal court, but denied that the Court of Claims' lack of subject matter jurisdiction over Plaintiff's federal claims somehow deprives this Court of jurisdiction. See *Prime Time Int'l Distrib, Inc v Dep't of Treasury*, 322 Mich App 46, 52–53; 910 NW2d 683 (2017) (citing *Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 774; 664 NW2d 185 (2003)) ("An exception to the general jurisdiction of the circuit court exists when the Court of Claims is given exclusive jurisdiction.").

9. Denied for the reason that "the circuit court is presumed to have subject-matter jurisdiction over a civil action unless Michigan's Constitution or a statute expressly prohibits it from exercising jurisdiction or gives to another court exclusive jurisdiction over the subject matter of the suit." *Teran v Rittley*, 313 Mich App 197, 206; 882 NW2d 181 (2015).

10. Denied for the reason that this Court has subject matter jurisdiction over all civil claims, including Plaintiff's federal claims in the case at bar, and no statute gives jurisdiction over these claims to "some other court," see MCL § 600.6440 (divesting Court of Claims' exclusive jurisdiction), or prohibits this Court from exercising jurisdiction.

11. Denied for the reason that this Court does not lack subject matter jurisdiction over Plaintiff's federal claims and, therefore, should not dismiss Counts III and IV of Plaintiff's amended

complaint. See *Gordon v Sadasivan*, 144 Mich App 113, 117–19; 373 NW2d 258 (1985).

12. Admitted that Plaintiff could have elected to file a separate lawsuit in federal court that included only her federal claims, but in the interest of judicial economy elected not to do so.

13. Admitted that Defendant sought concurrence before filing this motion and that Plaintiff refused to concur, and Plaintiff offered to stipulate to removal of these claims to federal court, which Defendants refused to do.

14. It is worth mentioning that Defendants filed an identical motion for summary disposition in an identical case currently pending in this Court before Judge Hughes, who denied that motion in its entirety. (*See Ex. 1*, 12/12/18 Order).

WHEREFORE, Plaintiff, FATIMA OLDEN, respectfully requests that this Honorable Court deny Defendants' Motion for Summary Disposition as to Counts III and IV of Plaintiff's Amended Complaint in its entirety and enter an order dismissing Defendants' motion with prejudice.

Respectfully submitted,

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila

ANDREW J. LAURILA (P78880)
Attorney for Plaintiff
201 E. 4th Street
Royal Oak, MI 48067

Dated: January 18, 2019

**BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AS TO
COUNTS III AND IV OF PLAINTIFF'S AMENDED COMPLAINT**

INTRODUCTION

Defendants misapprehend Michigan's subject matter jurisdiction and sovereign immunity rules. This Court possesses subject matter jurisdiction over Plaintiff's two federal claims and should not dismiss those claims and force Plaintiff to commence a second suit in federal court. If the

Legislature had intended such a bizarre result when enacting and amending the Court of Claims Act, it surely could have made that intent clearer.

STATEMENT OF FACTS

Plaintiff, Fatima Olden, is a long-time Corrections Officer employed by Defendant Michigan Department of Corrections (herein "MDOC") at the Macomb Correctional Facility (herein "MCF") in New Haven, Michigan. In 2015, Plaintiff returned to work from vacation to find that MDOC had instituted a leader dog for the blind training program at MCF in which inmates train leader dogs, which live in the inmates' cells with them. Plaintiff immediately began suffering severe allergic-type reactions while at work and was subsequently diagnosed by an allergist as having asthma exacerbated by the presence of pet dandruff. Plaintiff thereafter requested an accommodation for her disability in the form of an assignment to any position in which she would not have to encounter dogs and particularly where she would not have to work inside one of the three housing units that dogs were living in. Defendants denied her accommodation request for the reason that an essential function of Plaintiff's position was the ability to work any assignment.

After being denied a reasonable accommodation, Plaintiff commenced a lawsuit in this Honorable Court under both state and federal law. Defendants sought, and this Court granted, summary dismissal of Plaintiff's federal claims under the Americans with Disabilities Act and granted Plaintiff leave to file an Amended Complaint naming the proper party in Plaintiff's Title I ADA claim. Plaintiff's Amended Complaint alleges violations of Michigan's Persons with Disabilities Civil Rights Act (PWDCRA), M.C.L. § 37.1101, *et seq.*, (Counts I & II), and the federal Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, (Count IV), against Defendants MDOC and State of Michigan *only*. Plaintiff additionally alleges a violation of Title I of the ADA, 42 U.S.C. § 12101, *et seq.*, against MCF's current Warden, Patrick Warren, in which Plaintiff seeks injunctive relief *only*. Defendants have filed yet another motion seeking dismissal of Plaintiff's federal claims.

LAW & ARGUMENT

I. Standard of Review

Jurisdictional questions under MCR 2.116(C)(4) and issues of statutory interpretation are questions of law. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 393; 651 NW2d 756 (2002). A trial court is duty-bound to recognize the limits of its subject-matter jurisdiction. *Yee*, 251 Mich App at 399; see also *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007).

MCR 2.116(C)(4) permits a trial court to dismiss a complaint when “[t]he court lacks jurisdiction of the subject matter.” A (C)(4) motion may be supported or opposed by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(2). When reviewing a motion for summary disposition brought under MCR 2.116(C)(4) that asserts the court lacks subject-matter jurisdiction, the court must determine whether the pleadings demonstrate that the defendant is entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Summer v Southfield Bd of Ed*, 310 Mich App 660, 668; 874 NW2d 150 (2015); *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998).

II. Principles of Constitutional and Statutory Construction

The issue of Defendants’ immunity from suit in state court implicates rules of statutory construction. “The primary objective in interpreting a constitutional provision is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.” *O’Connell*, 316 Mich App at 97. In applying constitutional text, each term is given its “plain meaning at the time of ratification” but technical or legal terms of art are construed “in their technical, legal sense.” *Id.* at 98 (citing *Wayne Co v Hathcock*, 471 Mich 445, 468–69; 684 NW2d 765 (2004)).

“The primary goal of statutory interpretation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute.” *Epps v 4 Quarters Restoration LLC*,

498 Mich 518, 529; 872 NW2d 412 (2015) (quotation marks and citation omitted). “When the language of a statute is clear, it is presumed that the Legislature intended the meaning expressed therein.” *Id.* “[I]f the intent of the Legislature is not clear, courts must interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *Haynes v Village of Beulah*, 308 Mich App 465, 468; 865 NW2d 923 (2014) (quotation marks and citation omitted).

“The Legislature is presumed to have intended the meaning it plainly expressed. If the plain and ordinary meaning of the statutory language is clear, then judicial construction is neither necessary nor permitted. A court is required to enforce a clear and unambiguous statute as written.” *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 163; 577 NW2d 206 (1998). Statutes sharing subject matter or a common purpose are *in pari materia* and “must be read together as a whole.” *Bloomfield Twp v Kane*, 302 Mich App 170, 176; 839 NW2d 505 (2013) (quotation marks and citation omitted). Further, if there is “tension, or even conflict, between sections of a statute,” the court must, “if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them.” *O’Connell*, 316 Mich App at 91 (quotation marks and citations omitted).

III. Michigan’s Constitution and the RJA grant this Court subject matter jurisdiction over Plaintiff’s claims.

Circuit courts are courts of general jurisdiction that derive their power from the Michigan Constitution. *Id.* at 101. Michigan’s Constitution states that “[t]he circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; ... and jurisdiction of other cases and matters as provided by rules of the supreme court.” Const. 1963, art. 6, § 13. Similarly, the Revised Judicature Act (RJA), MCL § 600.101 *et seq.*, provides that “[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies...” MCL § 600.605.

The only limitation on the circuit courts’ subject matter jurisdiction over civil claims is “where

exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.” MCL § 600.605. Accordingly, “the circuit court is presumed to have subject-matter jurisdiction over a civil action unless Michigan’s Constitution or a statute expressly prohibits it from exercising jurisdiction or gives to another court exclusive jurisdiction over the subject matter of the suit.” *Teran v Ritley*, 313 Mich App 197, 206; 882 NW2d 181 (2015). The Court of Appeals has instructed courts examining statutory language to determine whether the Legislature intended to deprive the circuit court of jurisdiction that “[t]he language must leave no doubt that the Legislature intended to deprive the circuit court of jurisdiction of a particular subject matter.” *Detroit Auto Inter-Ins Exch v Maurizio*, 129 Mich App 166, 175; 341 NW2d 262 (1983).

IV. This Court has concurrent jurisdiction with the federal courts over Plaintiff’s federal claims.

It has long been established that, so long as Congress has not provided for exclusive federal-court jurisdiction, state courts may exercise subject-matter jurisdiction over federal-law claims “whenever, by their own constitution, they are competent to take it.” *Tafflin v Levitt*, 493 US 455, 459 (1990) (quoting *Claffin v Houseman*, 93 US 130, 136 (1876)). This rule reflects the fact that state courts possess sovereignty concurrent with that of the federal government, “subject only to limitations imposed by the Supremacy Clause.” *Tafflin, supra* at 458; see also U.S. Const., art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). Under the plain language of Michigan’s Constitution, state circuit courts are “competent” to hear federal claims. Const. 1963, art. 6, § 13 (“The circuit court shall have original jurisdiction in all matters not prohibited by law ...”).

Defendant has cited no authority which would deprive this Court of concurrent jurisdiction

over Plaintiff's federal claims under the ADA and Rehabilitation Act. State courts routinely interpret and apply federal law. See, e.g., *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380-81; 596 NW2d 153 (1999); *Demings v City of Ecorse*, 127 Mich App 608, 616; 621; 339 NW2d 498 (1983), aff'd in part, remanded in part 423 Mich 49 (1985). Unless the federal law in question explicitly vests the federal courts with exclusive jurisdiction, the states and federal courts share concurrent jurisdiction. In *Gulf Offshore Co v Mobil Oil Corp*, 453 U.S. 473 (1981), the United States Supreme Court clarified that the state courts have subject-matter jurisdiction over causes of action arising out of federal law unless federal law expressly confers exclusive jurisdiction to the federal courts. *Gulf Offshore Co, supra* at 477-79. "It is black letter law [] that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." *Id.* at 479. Neither the ADA nor the Rehabilitation Act provide for exclusive jurisdiction of the federal courts.¹ Accordingly, this Court shares concurrent subject subject-matter jurisdiction with the federal courts for Plaintiff's federal claims.

As explained by the U.S. Supreme Court, if concurrent jurisdiction otherwise exists, as is the case here, subject-matter jurisdiction over a federal-law claim is governed by state law. *Gulf Offshore Co, supra* at 478. The only potential limitation on Michigan's Constitutional grant of "original jurisdiction" to this Court over "all matters" is an explicit contrary statutory expression. See Const. 1963, art. 6, § 13. Similarly, the RJA provides that "[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies..." MCL § 600.605. Thus, both the state constitution and the RJA grant this Court subject matter jurisdiction over Plaintiff's federal claims. The only way this

¹ It is well-established that state courts possess concurrent jurisdiction over ADA claims. *Peden v. City of Detroit*, 470 Mich. 195, 201, n. 4; 680 N.W.2d 857 (2004) ("Plaintiff's federal ADA claim is properly before this Court because state courts enjoy concurrent jurisdiction over such claims."); see also *Hapgood v. City of Warren*, 127 F.3d 490, 494 (6th Cir. 1997) (citations omitted) ("State courts have concurrent jurisdiction over ADA claims."). While it appears that no court has ever specifically addressed whether Michigan's state courts possess concurrent jurisdiction over Rehabilitation Act claims, "there is authority indicating that Michigan state courts have jurisdiction to hear Rehabilitation Act claims." *B.D. ex rel. S.D. v. Dazzo*, No. 11-15347, 2012 WL 2711457, at *6 (E.D. Mich. July 9, 2012) (citing *Feyz v. Mercy Mem'l Hosp.*, 475 Mich. 663, 670; 719 N.W.2d 1 (2006); *Woolcott v. State Bd. of Educ.*, 134 Mich App. 555, 560-63; 351 N.W.2d 601 (1984)).

Court does not have jurisdiction is if some other statute expressly revokes it *or* grants exclusive jurisdiction to some other court. See MCL § 600.605.

Defendants' argument that this Court's subject matter jurisdiction has not been expressly provided for and thus state immunity from suit applies ignores the fundamental foundation laid by the State Constitution and RJA. Defendants have not identified any statutory revocation of this Court's concurrent jurisdiction or any other court with exclusive jurisdiction. Indeed, Defendants concede that the Court of Claims Act ("CCA") does not grant the Court of Claims exclusive jurisdiction of Plaintiff's federal claims. As explained below, Defendants have missed the mark in applying the CCA, RJA, constitution, and relevant federal law.

V. The Court of Claims does not have exclusive jurisdiction over Plaintiff's federal claims.

The Legislature's grant of exclusive jurisdiction to the Court of Claims over certain causes of action is an exception to the general original jurisdiction and concurrent federal jurisdiction of the state's circuit courts. See *Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763, 774; 664 NW2d 185 (2003). The Legislature created the Court of Claims, and thus that tribunal "has limited powers with explicit limits on the scope of its subject-matter jurisdiction." *Okrie v Michigan*, 306 Mich App 445, 448; 857 NW2d 254 (2014) (citations omitted). Accordingly, "[t]he jurisdiction of the Court of Claims is subject to Michigan statutory law," and therefore the Court of Claims "does not have extensive and inherent powers akin to those of a constitutional court of general jurisdiction." *Id.*² The Court of Claims Act (herein "CCA") states that "[e]xcept as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive." MCL § 600.6419(1). The Court of Claims has jurisdiction "[t]o hear and determine ... any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ

² In 2013, the Legislature enlarged the jurisdiction of the Court of Claims and transferred its locus from the Ingham Circuit Court to the Court of Appeals. See 2013 PA 164; *Baynesan v. Wayne State Univ.*, 316 Mich. App. 643, 646; 894 N.W.2d 102 (2016).

against the state or any of its departments or officers notwithstanding³ another law that confers jurisdiction of the case in the circuit court.” MCL § 600.6419(1)(a).

While section 6419(1) of the CCA appears to vest the Court of Claims with exclusive jurisdiction over virtually all claims against the state, this apparent exclusivity is misleading. Under MCL § 600.6421, the circuit courts retain jurisdiction over all claims “for which there is a right to a trial by jury as otherwise provided by law, including a claim against an individual employee of this state for which there is a right to a trial by jury as otherwise provided by law.” MCL § 600.6421(1). In addition, the Court of Claims does not have exclusive jurisdiction over claims against the state for which an “adequate remedy” exists in federal court. MCL § 600.6440. As recently explained by the Court of Appeals, “[b]y its plain language, MCL 600.6419 is expressly subject to MCL 600.6421” and, by extension, MCL § 600.6440. *Doe v Dep’t of Transportation*, --- Mich App ---; 2018 WL 2121739, at *5 (2018) [Docket No. 338999]. Put another way, if one of the CCA’s exclusive jurisdiction exceptions – either § 6421 (right to trial by jury) or § 6440 (adequate federal remedy) – apply to a plaintiff’s claims, then the circuit courts share concurrent jurisdiction with the Court of Claims, and the claims may be litigated in the appropriate circuit court. *Id.* at *5–6.

VI. This Court has subject matter jurisdiction over Plaintiff’s federal claims because the Court of Claims is divested of exclusive jurisdiction under MCL §§ 600.6421(a) and 600.6440.

Contrary to Defendants’ contention, this Court has subject matter jurisdiction over all of Plaintiff’s claims in this case. “Generally, subject-matter jurisdiction is defined as a court’s power to hear and determine a cause or matter. More specifically, subject-matter jurisdiction is the deciding body’s authority to try a case of the kind or character pending before it, regardless of the particular facts of the case.” *O’Connell v Director of Elections*, 316 Mich App 91, 100; 891 NW2d 240 (2016)

³ The Court of Appeals has explained that the term “notwithstanding” as used in § 6419 of the CCA means “in spite of; without being opposed or prevented by[.]” *Prime Time Int’l Distrib., Inc. v. Dep’t of Treasury*, 322 Mich. App. 46, 59, n 4; 910 N.W.2d 683 (2017) (internal quotations omitted) (quoting *Gray v. Chrostowski*, 298 Mich. App. 769, 778; 828 N.W.2d 435 (2012), quoting Random House Webster’s College Dictionary (1997)).

(internal quotation and citation omitted).

Defendants correctly concede that the Court of Claims does not have exclusive jurisdiction for Plaintiff's federal claims under the CCA, MCL § 600.6440, but incorrectly extrapolate that this exception deprives Plaintiff of any state-court forum for her federal claims. Defendants reach this conclusion despite acknowledging the general existence of concurrent state and federal jurisdiction over federal claims. Defendants not only incorrectly interpret the CCA but fail to harmonize it with the RJA and long-standing federal law. As explained in more detail below, because the CCA's jurisdictional exceptions apply here, this Court shares concurrent jurisdiction with the Court of Claims for Plaintiff's federal claims, which this Court otherwise has subject matter jurisdiction over notwithstanding the CCA.

A. This court has subject matter jurisdiction over Plaintiff's ADA and Rehabilitation Act claims under MCL § 600.6440.

1. Count III: Title I ADA Claim

In a decision directly on point, the Court of Appeals reversed a trial court's grant of an accelerated judgment to a defendant on the grounds that the circuit court lacked subject matter jurisdiction over federal claims against a state official. *Gordon v Sadasivan*, 144 Mich App 113; 373 NW2d 258 (1985). The plaintiff in *Gordon* filed suit in state court against "the State of Michigan, Department of Mental Health, Northville Regional Psychiatric Hospital, and John Reynolds, the hospital's superintendent, pursuant to 42 U.S.C. §§ 1981 and 1983 for violations of decedent's constitutional rights." *Id.* at 116. The individual defendant, hospital superintendent Reynolds, argued that the circuit court lacked jurisdiction over the plaintiff's § 1983 claim against him because it was a claim against the state for which no adequate remedy existed under federal law due to Eleventh Amendment sovereign immunity and therefore that the Court of Claims had exclusive jurisdiction. *Id.* at 117–18. The Court of Appeals rejected the defendant's arguments, ruling that the Eleventh Amendment did not bar the plaintiff from seeking a remedy for her § 1983 claim in federal court and,

“[a]ccordingly the Court of Claims lacks subject matter jurisdiction over this action.” *Id.* at 118–19. The court further held that the circuit court properly exercised subject matter jurisdiction over the plaintiff’s federal claim against the individual defendant “because state courts exercise concurrent jurisdiction over § 1983 claims[.]” *Id.* at 119 (citing *Dickerson v Warden, Marquette Prison*, 99 Mich App 630, 634; 298 NW2d 841 (1980)). Put another way, the state’s circuit courts have subject matter jurisdiction over federal claims they share concurrent jurisdiction with federal courts over, and which the Court of Claims does not possess exclusive jurisdiction over.

As illustrated by *Gordon*, the Court of Claims lacks exclusive jurisdiction over Plaintiff’s Title I ADA claim under MCL § 600.6440 because the Eleventh Amendment does not foreclose Plaintiff from seeking a remedy for that claim in federal court. *Bd of Trustees of Univ of Alabama v Garrett*, 531 US 356, 374, n 9 (2001) (abrogating states’ sovereign immunity for *Ex parte Young* claims).⁴ Because the Court of Claims’ jurisdiction over this claim is not exclusive, it shares concurrent jurisdiction with this Court. See *Doe, supra* at *5. In addition, this Court has concurrent jurisdiction with the federal courts over Plaintiff’s ADA claim. *Peden v City of Detroit*, 470 Mich 195, 201, n 4; 680 NW2d 857 (2004). Finally, no state or federal statute expressly prohibits this Court from exercising jurisdiction or gives another court exclusive jurisdiction over this federal claim. Thus, the foundational grant of original subject-matter jurisdiction to this Court over civil actions articulated in MCL § 600.605 applies, see *Teran*, 313 Mich App at 206, and this Court has subject matter jurisdiction over Plaintiff’s ADA claim, *Gordon*, 144 Mich App at 117–19.

Because this Court possesses subject matter jurisdiction over Plaintiff’s ADA claim, Plaintiff respectfully requests that this Court deny Defendants’ motion for partial summary disposition in regard to this claim.

2. Count IV: Rehabilitation Act Claim

⁴ See also *Mitchell through Mitchell v Cmty. Mental Health of Cent Michigan*, 243 F Supp 3d 822, 836 (ED Mich 2017) (citing *Ex parte Young*, 209 US 123, 159–60 (1908)) (recognizing that “state sovereign immunity as recognized by the Eleventh Amendment does not extend to suits against state officials seeking to enjoin violations of federal law”).

As with her ADA claim, this Court has subject matter jurisdiction over Plaintiff's Rehabilitation Act claim under the identical analytical approach, which is equally applicable here.

The Eleventh Amendment does not bar Plaintiff from litigating her Rehabilitation Act claim in federal court. 42 USC § 2000d-7(a)(1) ("A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973."). The Sixth Circuit has explained that because of the Act's unequivocal language, states "waive their Eleventh Amendment immunity with regard to Rehabilitation Act claims when they accept federal funds." *Nihiser v Ohio EPA*, 269 F3d 626, 628 (6th Cir 2001).⁵ Thus, under MCL § 600.6440, the Court of Claims and this Court share concurrent jurisdiction over Plaintiff's Rehabilitation Act claim, which alleges a violation of section 504. In addition, this Court has concurrent jurisdiction with the federal courts over Rehabilitation Act claims. See *BD ex rel SD v Dazzo*, No. 11-15347, 2012 WL 2711457, at *6 (ED Mich July 9, 2012) (citing *Feyz v Mercy Mem'l Hosp*, 475 Mich 663, 670; 719 NW2d 1 (2006); *Woolcott v State Bd of Educ*, 134 Mich App 555, 560-63; 351 NW2d 601 (1984)). Where, as is the case here, the Court of Claims does not have exclusive jurisdiction over a claim, the circuit courts have subject matter jurisdiction over that claim if they have concurrent jurisdiction for that claim with federal courts (i.e. as long as the federal statute at issue does not provide for exclusive jurisdiction in federal court). See *Gordon*, 144 Mich App at 117-19. Like the ADA, the Rehabilitation Act does not explicitly vest the federal courts with exclusive jurisdiction. See 29 USC § 794, *et seq.*. Therefore, this Court has concurrent jurisdiction over Plaintiff's Rehabilitation Act claim, original jurisdiction under MCL § 600.605, and this Court's exercise of subject matter jurisdiction is not otherwise limited by the Michigan's CCA or

⁵ See also *Clayton v Michigan Dep't of Corr*, No. 1:16-CV-830, 2016 WL 7173356, at *6 (WD Mich Dec 9, 2016), *aff'd*, No. 17-1003, 2017 WL 6804104 (6th Cir Aug 21, 2017) (citing *Nihiser*, *supra* at 628) (holding that "states waive sovereign immunity from claims under the RA" and "assum[ing] that the MDOC receives federal assistance for the prison programs and activities at issue")

any other statute or law.

3. The Michigan Legislature cannot use a jurisdictional scheme like the CCA to undermine federal law or avoid its enforcement.

Under Defendants' reading of the CCA, the statute would be unconstitutional, which would violate the constitutional avoidance statutory construction rule. See *Carey v South Dakota*, 250 US 118, 122 (1919) ("Where a statute is reasonably susceptible of two interpretations, by one of which it would be clearly constitutional and by the other of which its constitutionality would be doubtful, the former construction should be adopted." (citations omitted)); see also *In re Treasurer of Wayne Cty for Foreclosure*, 478 Mich 1, 9; 732 NW2d 458 (2007) (requiring courts to "presume a statute is constitutional and construe it as such, unless the only proper construction renders the statute unconstitutional"). If Defendants were correct in their interpretation of the CCA, the Michigan legislature would have created a statutory scheme by which plaintiffs were barred from asserting federal rights prohibiting disability employment discrimination in state court. Such a scheme could not stand, as "[a] jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear." *Haywood v Drown*, 556 US 729, 739 (2009); see also *Felder v Casey*, 487 US 131, 138 (1988) ("Under the Supremacy Clause of the Federal Constitution, '[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law,' for 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.'" (quoting *Free v Bland*, 369 US 663, 666 (1962))). The Michigan Supreme Court recognized this same limitation when interpreting § 211.78/ of the General Property Tax Act, MCL § 211.1, *et seq.*, holding that, in the context of a due process claim to the statute, "[b]ecause the Legislature cannot create a statutory regime that allows for constitutional violations with no recourse, that portion of the statute ... is unconstitutional and unenforceable." *In re Treasurer of Wayne Cty for Foreclosure*, 478 Mich 1; 732 NW2d 458 (2007).

Furthermore, Defendants' argument that CCA's jurisdictional scheme essentially requires that

all claims against the state be litigated in federal court when there is an adequate federal remedy ignores Michigan state courts' interpretation of their own jurisdictional statutes. As previously explained, the Court of Appeals has previously held that while § 600.6440 may divest the Court of Claims of jurisdiction when there is a remedy available in federal court, the result is not that *no* remedy can be sought in state court as Defendants assert here; instead, the proper forum to litigate such claims is the circuit court. *Gordon*, 144 Mich App at 117–19. Indeed, Michigan's circuit courts routinely decide cases involving causes of action for which a remedy in federal court exists. See, e.g., *Mudge v Macomb Cty*, 458 Mich 87; 580 NW2d 845 (1998); *Dampier v Wayne Cty*, 233 Mich App 714; 592 NW2d 809 (1999); *Morden v Grand Traverse Cty*, 275 Mich App 325; 738 NW2d 278 (2007). Proper interpretation of the relevant jurisdictional statutes dictates that Plaintiff is not barred from litigating her federal ADA and Rehabilitation Act claims in this Court along with her state PWDCRA claims.

Because Plaintiff's federal claims come within the CCA's jurisdictional exception, MCL § 600.6440, and this Court has concurrent jurisdiction with federal courts for ADA and Rehabilitation Act claims, this Court has subject matter jurisdiction over Counts III and IV of Plaintiff's Amended Complaint. Accordingly, Defendants' instant motion should be denied in its entirety.

B. This Court has subject matter jurisdiction over Plaintiff's federal claims under MCL § 600.6421(1).

Even assuming *arguendo* this Court did not have subject matter jurisdiction over Plaintiff's federal claims under § 600.6440, it nonetheless has jurisdiction under the other CCA exception, MCL § 600.6421, because Plaintiff has a right to a jury trial for these claims. As previously explained, the CCA explicitly preserves the circuit court's subject matter jurisdiction over all claims "for which there is a right to a trial by jury as otherwise provided by law." MCL § 600.6421(1). Thus, to come within this exception, Plaintiff must have a right to trial by jury for her federal claims as of November 12, 2013. See MCL § 600.6421(1) and (2).

As a starting point, Plaintiff's Title I ADA claim seeks only injunctive relief, which is well-established as being "equitable in nature." *Marconeri v Vill. of Mancelona*, 124 Mich App 286, 287; 335 NW2d 21 (1983); see also *Diaz v Michigan Dep't of Corr*, 703 F3d 956, 964 (6th Cir 2013) (characterizing *Ex parte Young* actions as seeking "equitable, prospective relief"). Plaintiff's Rehabilitation Act claim seeks money damages, which are axiomatically legal in nature. See, e.g., *Mertens v Hewitt Associates*, 508 US 248, 255 (1993) ("Money damages are, of course, the classic form of legal relief").

Under federal law, where, as here, a plaintiff seeks a combination of both legal and equitable relief, "the jury must determine all fact issues that are common to both the legal and equitable claims. If, after that, there are any other issues that are equitable in nature, the Court will determine them. The Court will make a determination based upon the finding of the jury of the disposition of the equitable claim." *Jones v Metro Hosp & Health Centers*, 88 FRD 341, 344 (ED Mich 1980). The U.S. Supreme Court's analysis in *In Lytle v Household Mfg, Inc*, 494 US 545 (1990) illustrates why this is so. In *Lytle*, the court confronted a case in which a plaintiff brought race discrimination claims under § 1981 and Title VII. It noted that the trial court improperly dismissed the legal claim, § 1981, before conducting a strictly bench trial on the equitable claim of breach of Title VII. The Court's analysis demonstrates that had the trial judge properly dismissed the § 1981 claim, it would not have been reversible error to try the Title VII claim without a jury:

When legal and equitable claims are joined in the same action, "the right to jury trial on the legal claim, including all issues common to both claims, remains intact." ... Further, had the § 1981 claims remained in the suit, a jury would have been required to resolve those claims before the court considered the Title VII claims

494 US at 549 (citation omitted).

Plaintiff is entitled to a jury trial for her Rehabilitation Act claim because it seeks money damages, see *Nihiser*, 269 F3d at 628–29 (no sovereign immunity for RA money damages suit), and

those money damages are not “in the nature of restitution” or “incidental to or intertwined with injunctive relief,” see *Transmatic, Inc v Gulton Indus, Inc*, 835 F Supp 1026, 1031–32 (ED Mich 1993). Because the money damages Plaintiff seeks here do not fall within the recognized exceptions for being treated as equitable in nature, Plaintiff has a right to a jury trial for this claim against the state.⁶

Plaintiff concedes that she has no right to a jury trial against the state for her Title I ADA claim if that were her only cause of action. See *Hedberg v Darlington Cty Disabilities & Special Needs Bd*, 133 F3d 915 (Table) (4th Cir 1997) (citing *Keller v Prince George's County*, 827 F2d 952, 955–56 (4th Cir 1987) (noting that when a Title VII or § 1983 trial is limited to equitable relief, no jury trial is available)). However, Plaintiff nonetheless enjoys a right to jury trial against the state “on all issues common to both” her ADA and Rehabilitation Act claims, *Lylle*, 494 US at 549. These two statutory schemes share substantial similarity in purpose and numerous definitional similarities. *Stevens v Inland Waters, Inc*, 220 Mich App 212, 216–17; 559 NW2d 61 (1996). Accordingly, Plaintiff is entitled to have a jury resolve the numerous issues common to both federal claims. In addition to common issues among her federal claims, Plaintiff is entitled to a jury trial on all common issues between her federal claims and state PWDCRA claims. The ADA and PWDCRA both broadly prohibiting “public entities from denying services to, excluding, or discriminating against a disabled person because of his or her disability.” *Martens v Rochester Cmty Sch*, No. 282706, 2009 WL 2136910, at *2 (Mich Ct App July 16, 2009) (citing 42 USC § 12132 and MCL § 37.1302). Moreover, “[t]he legal analysis under the ADA and PWDCRA is the same.” *Cotter v Ajilon Servs, Inc*, 287 F3d 593, 597 (6th Cir 2002). As the Rehabilitation Act adopts the “remedies, procedures, and rights”

⁶ Congress enacted the Rehabilitation Act, § 504, 29 USC § 794, in 1973, and then amended it in 1986 in response to the U.S. Supreme Court’s ruling in *Atascadero State Hosp v Scanlon*, 473 US 234, 247 (1985) that the Act did not validly abrogate state sovereign immunity. The right to a jury trial for a claim seeking money damages for a state’s violation of the RA clearly existed when the CCA was amended in 2013 to enlarge the Court of Claims’ jurisdiction. See *Nihiser v Ohio EPA*, 269 F3d 626, 628–29 (6th Cir 2001); see also *Smith v Barton*, 914 F2d 1330, 1338 (9th Cir 1990).

provided for in the ADA, see 29 USC § 794a, and the legal analysis for these claims is “the same” as for Plaintiff’s state-law PWDCRA claims, the only portion of any of Plaintiff’s claims that a jury would not decide is the nature of the injunctive relief awarded under the ADA in the event Plaintiff prevailed at trial. Thus, Plaintiff is entitled to a jury trial on Defendants’ liability under all of her claims, and therefore comes within the CCA’s exclusive jurisdiction exception. See MCL § 600.6421(1).

Where the Court of Claims does not have exclusive jurisdiction over a claim under one of the jurisdictional exceptions, it shares concurrent jurisdiction for that claim with this Court. See *Doe, supra* at *5; *Gordon, supra* at 117–19. Accordingly, this Court has subject matter jurisdiction over Plaintiff’s claims, and Plaintiff respectfully requests that this Court deny Defendants’ motion for partial summary disposition in its entirety.

C. Michigan’s rules of statutory interpretation and overwhelming public policy dictate that this Court has concurrent subject matter jurisdiction over Plaintiff’s state and federal claims.

If the Legislature intended for federal claims against the state to be litigated solely in federal court, it could have said so in § 6440 or some other statute. As this is not the case, §§ 6419 and 6440 of the CCA must be read in conjunction with § 600.605 of the RJA and applied in a way that gives effect to all. See *Bloomfield Twp*, 302 Mich App at 176; *O’Connell*, 316 Mich App at 98. Defendants’ interpretation of MCL § 600.6419(1) would deprive both the Court of Claims and this Court of jurisdiction, thereby rendering portions of MCL § 600.605, MCL § 600.6419, 600.6421, and MCL § 600.6440 nugatory. See *O’Connell*, 316 Mich App at 104. Defendants ask this Court to effectively ignore or eliminate altogether the concept of concurrent jurisdiction articulated by the United States Supreme Court in *Gulf Offshore Co v Mobil Oil Corp*, 453 US 473 (1981). This request is an impermissible expansion of state immunity from suit. Moreover, the very problems with the CCA identified by Supreme Court Justice Young in 2003, when he called the CCA “poorly drafted statutes”

and called for the Legislature “to make more clear its intent concerning the scope of the Court of Claims jurisdiction, including the jurisdictional relationship between the Court of Claims and our circuit courts,” persist into the present and unnecessarily complicate this issue. See *Parkwood Ltd Dividend Hous Ass’n v State Hous Dev Auth*, 468 Mich 763, 777; 664 NW2d 185 (2003) (J., Young, concurring). Under such circumstances, forcing Plaintiff to litigate two separate suits for violations of virtually identical state and federal civil rights statutes is manifestly unjust.

In addition to statutory interpretation, public policy dictates that this Court reject Defendants’ assertion that that enforcing state and federal anti-disability discrimination law against the State requires duplicative lawsuits in state and federal court. Defendants concede that if this Court dismisses Plaintiff’s federal claims Plaintiff can refile them in federal court. However, Defendants fail to mention that the Eleventh Amendment bars Plaintiff from bringing her PWDCRA claims in that same action. Instead, Defendants urge this Court to adopt their tortured interpretation of the CCA and state immunity principles, under which individuals would be forced to file two lawsuits – in both state and federal court – to obtain relief for the State’s violation of their rights under virtually identical state and federal law. See *Cotter v Ajilon Servs, Inc*, 287 F3d 593, 597 (6th Cir 2002) (“The legal analysis under the ADA and PWDCRA is the same.”). Litigating two separate cases unavoidably costs more (in both money and time), so the State’s approach at least implicitly makes it more expensive for an individual to obtain the full measure of relief afforded under state and federal law for the State’s violation of the PWDCRA and ADA/Rehabilitation Act. The State concedes that these statutes are equally applicable to and enforceable against it, just not apparently in the same court. (See Defendants’ Motion, pp. 15: “... the only courts competent to hear Counts III and IV of Plaintiff’s amended complaint are the federal courts). This argument must fail.

It is worth mentioning that the unavoidable increase in costs and time necessitated by litigating two separate cases would be incurred by both plaintiffs and the State Defendants alike. Defendants’

essentially request that this Court make it more expensive and burdensome for individuals to enforce disability law against the State, which will necessarily have to spend additional tax-payer money defending the duplicative suits its conduct necessitated. To say nothing of that fact that Defendants seems unconcerned with unnecessarily burdening both the federal and state court systems, including increasing the workload of two judges. The Legislature cannot have intended this result when it enacted the CCA, which it presumably did with full knowledge and awareness of the RJA and applicable federal law, including case law interpreting the CCA's provisions at issue here. This Court should deny Defendants' motion in its entirety and permit Plaintiff to litigate all of her claims, including those in Counts III and IV, in this Court.

CONCLUSION

Defendants' instant motion should be denied in full for the reasons stated herein, as well as in Plaintiff's Response to Defendants' Motion for Summary Disposition of Counts III and IV of Plaintiff's Amended Complaint.

WHEREFORE, Plaintiff, FATIMA OLDEN, respectfully requests that this Honorable Court deny Defendants' Motion for Summary Disposition as to Counts III and IV of Plaintiff's Amended Complaint in its entirety and enter an order dismissing Defendants' motion with prejudice.

Respectfully submitted,

THE RASOR LAW FIRM, PLLC

/s/ Andrew J. Laurila

ANDREW J. LAURILA (P78880)
Attorney for Plaintiff
201 E. 4th Street
Royal Oak, MI 48067

Dated: January 18, 2019

PROOF OF SERVICE

The undersigned certified that a copy of the foregoing instrument was delivered to each of the attorneys of record and/or unrepresented and/or interested parties on **January 18, 2019**, at their respective addresses as disclosed in the pleadings on record in this matter by:

- US First Class Mail
- Hand Delivery
- Fed Ex
- Facsimile Transmission
- UPS
- Other: E-Filing

/s/ Stephanie Moore
Stephanie Moore

EXHIBIT 1

RECEIVED by MSC 12/20/2021 4:03:47 PM

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KENNETH McKENZIE,

Plaintiff,

Case No. 18-002451-CD

vs.

Hon. Muriel D. Hughes

MICHIGAN DEPARTMENT OF CORRECTIONS;
STATE OF MICHIGAN; WARDEN PATRICK
WARREN, in his official capacity,

Defendants.

JAMES B. RASOR (P43476)
ANDREW J. LAURILA (P78880)
RASOR LAW FIRM, PLLC
Attorneys for *Plaintiff*
201 E. Fourth St.
Royal Oak, MI 48067
(248) 543-9000 / Fax: (248) 543-9050
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

ADAM R. DE BEAR (P80242)
KENDELL ASBENSON (P81747)
Assistant Attorneys General
Attorneys for *Defendants*
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162 / Fax: (517) 373-2060
debeara@michigan.gov
asbensonk1@michigan.gov

RASOR LAW FIRM, PLLC

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AS
TO COUNTS III AND IV OF PLAINTIFF'S AMENDED COMPLAINT**

At a session of said court held in the
courthouse located in the City of Detroit,
County of Wayne, State of Michigan on
November 28, 2018 12/12/2018

This matter having come before the court on Defendant's Motion for Summary
Disposition as to Counts III and IV of Plaintiff's Amended Complaint, all parties having
been presented, the court having entertained oral argument, and otherwise being fully
advised in the premises;

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition as to

18-001424-CD FILED IN MY OFFICE Cathy M. Garrett Cathy M. Garrett WAYNE COUNTY CLERK 1/18/2019 6:31 AM Inga Robertson Inga Robertson
10-002451-CD FILED IN MY OFFICE WAYNE COUNTY CLERK 12/12/2018 4:07 PM Tara Hickman Tara Hickman

RASOR LAW FIRM, PLLC

Counts III and IV of Plaintiff's Amended Complaint brought under MCR 2.116(C)4 is denied with prejudice for reasons stated on the record.

/s/ Muriel D. Hughes 12/12/2018
Honorable Muriel D. Hughes, Circuit Judge

Approved as to form:

/s/ Andrew J. Laurila
Andrew J. Laurila (P78880)
Attorney For Plaintiffs

/s/ Kendell Asbenson (w/ permission)
Kendell S. Asbenson (P81747)
Attorney for Defendant

RECEIVED by MSC 12/20/2021 4:03:47 PM

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

FATIMA OLDEN,
Plaintiff,

v

No. 18-001424-CD

MICHIGAN DEPARTMENT OF
CORRECTIONS, STATE OF MICHIGAN,
and WARDEN PATRICK WARREN, in
his official capacity,
Defendants.

HON. DANA M. HATHAWAY

James B. Rasor (P43476)
Andrew J. Laurila (P78880)
Attorneys for Plaintiff
Rasor Law Firm, PLLC
201 E. Fourth Street
Royal Oak, MI 48067
(248) 543-9000
(248) 543-9050 (fax)
jbr@rasorlawfirm.com
ajl@rasorlawfirm.com

Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorney for Defendants
Civil Litigation, Employment &
Elections Division
P.O. Box 30217
Lansing, MI 48909
(517) 373-6434
(517) 241-7987 (fax)
asbensonk1@michigan.gov

DEFENDANTS' REPLY BRIEF

I. Plaintiff's argument ignores the holding of *Greenfield Construction*.

In response to Defendants' motion, Plaintiff argues that MCL 600.605 vests this Court with jurisdiction over her federal claims against the State. Plaintiff writes that, "Defendants have not identified any statutory revocation of this Court's concurrent jurisdiction or any other court with exclusive jurisdiction." (Pl Br, 9.) In this argument, however, Plaintiff ignores *Greenfield Construction* and well-established Michigan sovereign immunity jurisprudence, which provides that the State is immune from suit in its own courts, unless that immunity has been waived.

"While it is clear that the circuit court has general original jurisdiction in matters of law and equity . . . its jurisdiction is not limitless." *Greenfield Const Co Inc v Michigan Dept of State Highways*, 402 Mich 172, 194 (1978). To illustrate the limitations of the circuit courts' jurisdiction, the Michigan Supreme Court in 1978 highlighted the jurisdictional exceptions found in Art 6, § 13 and MCL 600.605 and stressed that "[t]o [those] emphasized exceptions, [it] has repeatedly added those cases in which the defendant is by its sovereignty suit immune." *Greenfield Const*, 402 Mich at 194. The Court then explained "it is well settled that the circuit court is without jurisdiction to entertain an action against the State of Michigan unless that jurisdiction shall have been acquired by legislative consent." *Id.* Simply put, there is no statute in which the Legislature waived immunity and consented the jurisdiction of the circuit courts over federal claims against the State.

In addition to the Court of Claims, the circuit courts do have concurrent jurisdiction over certain claims for which there is a right to a jury trial. For

example, in *Doe v Dep't of Transportation*, the Court of Appeals observed that the Legislature, when enacting the Elliott-Larsen Civil Rights Act (ELCRA), included the State in its definition of employer and allowed for ELCRA claims to be brought in the circuit courts. 919 NW2d 670, 676, appeal denied, 503 Mich 876 (2018). Thus, the Court determined that under the express language of the ELCRA, “the Legislature intended to submit the state to the jurisdiction of the circuit court.” *Id.* Additionally, because “the court rules governing circuit court[s] allow a party seeking money damages ‘to be tried by a jury upon request’ . . . ‘the Legislature consented that the state may be tried by a jury in’ ELCRA cases.” *Id.* Ultimately, because MCL 600.6421(1) provides that the Court of Claims Act does not “eliminate[] . . . any right a party may have to a trial by jury,” the Court of Appeals determined that the circuit court and the Court of Claims had concurrent jurisdiction over the plaintiff’s ELCRA claims. *Id.*

However, unlike claims brought under the ELCRA, the circuit courts have never gained subject matter jurisdiction over Plaintiff’s federal claims because the Legislature never consented to the jurisdiction of the circuit court for such claims. See, e.g., *Pohutski v City of Allen Park*, 465 Mich 675, 681 (2002) (“From the time of Michigan’s statehood, th[e] [Michigan Supreme] Court’s jurisprudence has recognized that the state, as sovereign, is immune from suit unless it consents.”).

In her response, Plaintiff relies on *Gordon v Sadasivan*, 144 Mich App 113 (1985) in support of her argument that this Court has jurisdiction over her federal

claims.¹ *Gordon*, however, involved a claim brought under 42 USC 1983 against a state hospital superintendent. *Gordon*, 144 Mich App at 116. On appeal, the superintendent maintained that he was entitled to sovereign immunity. *Id.* at 116-117. However, it is well settled sovereign immunity does not bar suits against state officials sued in their individual capacities, see, e.g., *Hafer v Melo*, 502 US 21, 31 (1991), and the *Gordon* Court correctly determined that the superintendent was not entitled to sovereign immunity because the plaintiff “alleged facts that demonstrate that he [was] seeking to impose *individual and personal liability* on the [superintendent], not the state.” *Id.* at 119 (emphasis added).

Unlike the plaintiff in *Gordon*, Olden did not file a Section 1983 action against an individual; rather, he is seeking to impose liability on the State. As such, Michigan’s sovereign immunity jurisprudence still applies.

II. MCL 600.6440 is not violative of the Constitution.

Plaintiff argues that Defendants’ reading of the Court of Claims Act renders the statute unconstitutional. (Pl Br, 13.) In particular, Plaintiff cites *Haywood v Drown*, 556 US 729, 730 (2009) which provides that “[a] jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear.” In *Haywood*, the Supreme Court reviewed a New York statute that divested its courts of jurisdiction over all damages claims—both state claims and §

¹ Plaintiff also cited *Peden v City of Detroit*, 470 Mich 195 for the proposition that this court has concurrent jurisdiction with the federal courts over his ADA claim; however, Plaintiff’s reliance on *Peden* is inapposite as only the State and its departments—not lesser sovereigns such as cities—enjoy sovereign immunity.

1983 claims—against New York state corrections officers. *Haywood*, 556 US at 733-734. The Court noted that New York enacted the statute as it was “[m]otivated by the belief that damages suits filed by prisoners against state correction officers were by and large frivolous and vexatious.” *Id.* at 733. Nevertheless, the Supreme Court ruled the law was “contrary to Congress’ judgment that *all* persons who violate federal rights while acting under color of state law shall be held liable for damages.” *Id.* at 736-737 (emphasis as in original). Therefore, the Court found the statute unconstitutional and held that “having made the decision to create courts of general jurisdiction that regularly sit to entertain analogous suits, New York is not at liberty to shut the courthouse door to federal claims that it considers at odds with its local policy.” *Id.*

Here, unlike the statute at issue in *Haywood* which *divested* New York’s courts of jurisdiction they previously possessed, MCL 600.6440 merely *bars* jurisdiction in the Court of Claims—a legislatively created court—over all claims for which there is a federal remedy.² It is indeed the case that Michigan’s circuit courts are courts of general jurisdiction, but Michigan has never had any courts that “regularly sit to entertain” ADA or Rehabilitation Act claims against the State.

² The Eastern District has described MCL 600.6440 as simply requiring “an exhaustion of federal court remedies” and “dictat[ing] an order of procedure order with respect to those cases for which federal amenability to suit has already been established.” *Ewing v Bd of Regents*, 552 F Supp 881, 884-885 (ED Mich, 1982).

Accordingly, the Supreme Court's decision in *Haywood*³ does not make MCL 600.6440 unconstitutional.⁴

Finally, defendants do not deny that while the present motion has been pending Judge Hughes denied a similar motion in a similar case; however, that case was wrongly decided and has been appealed as a right. The appeal remains pending.

RELIEF REQUESTED

For the reasons expressed above and in their principal brief, Defendants request that this Court dismiss Counts III and IV of Plaintiff's amended complaint.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Kendell S. Asbenson
Kendell S. Asbenson (P81747)
Assistant Attorney General
Attorneys for Defendant
P.O. Box 30217
Lansing, Michigan 48909
517.373.6434
P81747

Dated: January 22, 2019

³ Moreover, as noted by the Supreme Court, the holding in *Haywood* "address[ed] only the unique scheme adopted by" New York. *Haywood*, 556 US at 741-742.

⁴ And assuming for the sake of argument that MCL 600.6440 were unconstitutional, this Court would not therefore gain jurisdiction over Plaintiff's federal claims.

PROOF OF SERVICE

On January 22, 2019, I electronically filed the foregoing papers with the Wayne County Circuit Court using the MiFile system, which will provide electronic copies to counsel of record, and I certify that my secretary has mailed by U.S. Postal Service the papers to any non-ECF participant.

/s/Kendell S. Asbenson
Kendell S. Asbenson (P81747)
Assistant Attorney General
P.O. Box 30217
Lansing, Michigan 48909
517.373.6434

13

Court of Appeals, State of Michigan

ORDER

Fatima Olden v Department of Corrections

Docket No. 347798

LC No. 18-001424-CD

Christopher M. Murray
Presiding Judge

Cynthia Diane Stephens

Anica Letica
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

The motion to consolidate is GRANTED. This case shall be CONSOLIDATED with the claim of appeal filed in Docket No. 347061.

RECEIVED

APR 25 2019

CIVIL LITIGATION, EMPLOYMENT
& ELECTIONS DIVISION Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 23 2019

Date


Chief Clerk

CHRISTOPHER M. MURRAY
CHIEF JUDGE
JANE M. BECKERING
CHIEF JUDGE PRO TEM
DAVID H. SAWYER
MARK J. CAVANAGH
KATHLEEN JANSEN
JANE E. MARKEY
PATRICK M. METER
KIRSTEN FRANK KELLY
KAREN FORT HOOD
STEPHEN L. BORRELLO
DEBORAH A. SERVITTO
ELIZABETH L. GLEICHER
CYNTHIA DIANE STEPHENS



State of Michigan
Court of Appeals

MICHAEL J. KELLY
DOUGLAS B. SHAPIRO
AMY RONAYNE KRAUSE
MARK T. BOONSTRA
MICHAEL J. RIORDAN
MICHAEL F. GADOLLA
COLLEEN A. O'BRIEN
BROCK A. SWARTZ
THOMAS C. CAMERON
JONATHAN TUKEL
ANICA LETICA
JAMES ROBERT REDFORD
JUDGES
JEROME W. ZIMMER
CHIEF CLERK

RECEIVED

APR 25 2019

POLICY ON CONSOLIDATED CASES

CIVIL DIVISION
RECEIVED

The enclosed order consolidates the noted appeals. This statement explains the effect of consolidation on the appellate process.

FILING DEADLINES regarding transcripts, motions or briefs will not be affected by the consolidation. Rather, those deadlines that would apply in each individual docket number will be enforced by the Court. Where brief due dates are different in each docket number, on motion to the Court and payment of one motion fee counsel may be permitted to consolidate brief due dates so that one brief may be filed.

CAPTIONS in consolidated cases are not generally affected by consolidation. The easiest and most accurate way to caption a pleading to be filed in a set of consolidated cases is to reproduce the individual captions seriatim, in ascending order of this Court's docket numbers. Party connections, such as defendant-appellant, plaintiff-appellee, should be accurate within each docket number. Combining all parties and party connections into one catch-all caption is discouraged because it is almost impossible to do so without sacrificing accuracy.

DOCKETING of pleadings will be most quickly accomplished if the title of the pleading specifies the individual docket number(s) in which filing is to be made. For example, where plaintiff is appellant in one case and appellee in the other, docketing will be facilitated by the following pleading title:

"Plaintiff-Appellant's Brief in No. 229000"

FORMAL SUBMISSION of consolidated cases to a panel is joint. The panel will receive all briefs filed in all parts of the consolidated cases. If oral argument has been preserved, the cases will be argued as one case before the same panel. Time allotted to each side for oral argument will be calculated pursuant to MCR 7.214(B). Note that if a brief is late in one case of a set of consolidated cases, oral argument as to the issues raised in that brief is not preserved.

DECISION of consolidated cases will occur in one opinion. Release of the opinion will occur as per the Court's customary procedures.

If you have any questions at all about preparing documents for filing in your consolidated appeals, please contact the Clerk's Office for assistance.

DETROIT OFFICE
CADILLAC PLACE
3020 W. GRAND BLVD. SUITE 14-300
DETROIT, MICHIGAN 48202-6020
(313) 972-5678

TROY OFFICE
COLUMBIA CENTER
201 W. BIG BEAVER RD. SUITE 800
TROY, MICHIGAN 48064-4127
(248) 524-8700

GRAND RAPIDS OFFICE
STATE OF MICHIGAN OFFICE BUILDING
350 OTTAWA, N.W.
GRAND RAPIDS, MICHIGAN 49503-2349
(616) 456-1167

LANSING OFFICE
925 W. OTTAWA ST.
P.O. BOX 30022
LANSING, MICHIGAN 48909-7522
(517) 373-0786

COURT OF APPEALS WEB SITE - <http://courts.mi.gov/courts/coa/>

Defendants-Appellants' Page 0187

RECEIVED
MSC 12/20/2021 4:03:47 PM

REGISTER OF ACTIONS

[CASE NO. 18-001424-CD](#)

RECEIVED by MSC 12/20/2021 4:03:47 PM

PARTY INFORMATION

PARTY INFORMATION		Attorneys
Defendant	Haas, Warden Randall	Adam R. De Bear <i>Retained</i> (517) 335-7573(W)
		Adam Lee Spinelli Fracassi <i>Retained</i> (517) 335-3234(W)
		Kyla Barranco <i>Retained</i> (517) 335-7573(W)
Defendant	Michigan Department of Corrections	Adam R. De Bear <i>Retained</i> (517) 335-7573(W)
		Adam Lee Spinelli Fracassi <i>Retained</i> (517) 335-3234(W)
		Kendell Scott Asbenson <i>Retained</i> (517) 335-7659(W)
		Kyla Barranco <i>Retained</i> (517) 335-7573(W)
Defendant	State of Michigan	Adam R. De Bear <i>Retained</i> (517) 335-7573(W)
		Adam Lee Spinelli Fracassi <i>Retained</i> (517) 335-3234(W)
		Kyla Barranco <i>Retained</i> (517) 335-7573(W)
Defendant	Warren, Warden Patrick	
Plaintiff	Olden, Fatima	Andrew John Laurila <i>Retained</i> (248) 543-9000(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
02/05/2018	Complaint, Filed
02/05/2018	Service Review Scheduled
02/05/2018	Status Conference Scheduled

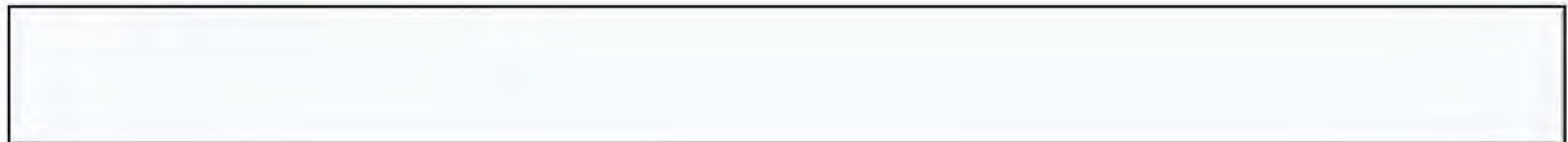
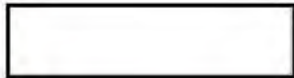
02/05/2018 [Case Filing and Jury Trial Fee - Paid](#)
02/21/2018 [Service of Complaint, filed](#)
02/21/2018 [Proof of Service, Filed](#)
02/21/2018 [Service of Complaint, filed](#)
02/21/2018 [Proof of Service, Filed](#)
02/21/2018 [Proof of Service, Filed](#)
02/21/2018 [Proof of Service, Filed](#)
02/21/2018 [Proof of Service, Filed](#)
03/05/2018 [Service of Complaint, filed](#)
03/05/2018 [Proof of Service, Filed](#)
03/08/2018 [Proof of Service, Filed](#)
03/19/2018 [Order Extending Time, Signed and Filed](#)
03/28/2018 [Service of Complaint, filed](#)
03/28/2018 [Proof of Service, Filed](#)
04/18/2018 [Proof of Service, Filed](#)
04/30/2018 [Order Extending Time, Signed and Filed](#)
05/02/2018 [Answer to Complaint, Filed](#)
05/02/2018 [Miscellaneous Motion, Filed-WVD](#)
05/02/2018 [Proof of Service, Filed](#)
05/02/2018 [Motion for Summary Judgment/Disposition, Filed](#)
05/07/2018 [Praeipce, Filed](#) (Judicial Officer: Brennan, Megan Maher)
05/07/2018 [Praeipce, Filed](#) (Judicial Officer: Brennan, Megan Maher)
05/08/2018 **Status Conference** (8:00 AM) (Judicial Officer Giovan, William J.)
Result: Reviewed by Court
05/08/2018 [Status Conference Scheduling Order, Signed and Filed](#)
05/08/2018 **Settlement Conference Scheduled**
05/08/2018 [Appearance of Attorney, Filed](#)
05/08/2018 [Appearance of Attorney, Filed](#)
05/08/2018 [Proof of Service, Filed](#)
05/08/2018 [Proof of Service, Filed](#)
05/11/2018 [Proof of Service, Filed](#)
05/11/2018 [Proof of Service, Filed](#)
05/25/2018 [Order Substituting Defendant Attorney, Signed and Filed](#)
05/25/2018 [Order for Substitution of Attorney, Signed and Filed](#)
06/04/2018 **Case Reassigned**
06/13/2018 [Answer to Motion, Filed](#)
06/13/2018 [Proof of Service, Filed](#)
06/15/2018 [Answer to Motion, Filed](#)
06/15/2018 [Proof of Service, Filed](#)
06/20/2018 **Motion Hearing** (11:00 AM) (Judicial Officer Hathaway, Dana Margaret)
Result: Held
06/20/2018 **Motion Denied, Order to Follow** (Judicial Officer: Hathaway, Dana Margaret)
06/25/2018 [Notice of Hearing, Filed](#)
06/25/2018 [Proof of Service, Filed](#)
07/11/2018 [Proof of Service, Filed](#)
07/12/2018 [Order Denying Motion, Signed and Filed](#)
07/16/2018 [Proof of Service, Filed](#)
07/16/2018 [Proof of Service, Filed](#)
07/26/2018 [Miscellaneous Pleadings, Filed](#)
07/26/2018 [Proof of Service, Filed](#)
07/30/2018 [Witness List, Filed](#)
07/30/2018 [Proof of Service, Filed](#)
07/30/2018 [Witness List, Filed](#)
07/30/2018 [Proof of Service, Filed](#)
08/09/2018 [Witness List, Filed](#)
08/09/2018 [Proof of Service, Filed](#)
08/28/2018 [Miscellaneous Pleadings, Filed](#)
08/28/2018 [Miscellaneous Pleadings, Filed](#)
08/28/2018 [Proof of Service, Filed](#)
08/28/2018 [Proof of Service, Filed](#)
09/10/2018 [Reply to Brief, Filed](#)
09/10/2018 [Proof of Service, Filed](#)
09/14/2018 **Motion Hearing** (8:30 AM) (Judicial Officer Hathaway, Dana Margaret)
06/20/2018 Reset by Court to 09/14/2018
Result: Held
09/14/2018 **Motion Denied, Order to Follow** (Judicial Officer: Hathaway, Dana Margaret)
09/14/2018 [Proof of Service, Filed](#)
09/17/2018 [Order Denying, Signed and Filed](#)
09/24/2018 [Proof of Service, Filed](#)
09/25/2018 [Miscellaneous Pleadings, Filed](#)

09/25/2018 [Proof of Service, Filed](#)
09/26/2018 [Amended Complaint, Filed](#)
09/26/2018 [Proof of Service, Filed](#)
09/27/2018 [Order, Signed and Filed](#)
10/17/2018 [Substitution of Attorney, Filed](#)
10/17/2018 [Proof of Service, Filed](#)
10/17/2018 [Notice of Hearing, Filed](#)
10/17/2018 [Motion for Summary Judgment/Disposition, Filed](#)
10/17/2018 [Brief, Filed](#)
10/17/2018 [Proof of Service, Filed](#)
10/17/2018 [Answer to Amended Complaint, Filed](#)
10/17/2018 [Proof of Service, Filed](#)
10/18/2018 [Notice of Hearing, Filed](#)
10/18/2018 [Proof of Service, Filed](#)
10/19/2018 [Praecipe, Filed](#) (Judicial Officer: Hathaway, Dana Margaret)
11/01/2018 [Motion to Adjourn, Filed](#)
11/01/2018 [Proof of Service, Filed](#)
11/05/2018 [Proof of Service, Filed](#)
11/05/2018 [Proof of Service, Filed](#)
11/07/2018 [Praecipe, Filed](#) (Judicial Officer: Hathaway, Dana Margaret)
11/15/2018 **Motion Hearing** (1:00 PM) (Judicial Officer Hathaway, Dana Margaret)
11/16/2018 Reset by Court to 11/15/2018
Result: Reviewed by Court
11/15/2018 **Motion Granted, Order to Follow** (Judicial Officer: Hathaway, Dana Margaret)
11/19/2018 **Case Evaluation - Employment**
11/20/2018 [Proof of Service, Filed](#)
11/21/2018 [Order for Miscellaneous Action, Signed and Filed](#)
01/18/2019 [Answer to Motion, Filed](#)
01/18/2019 [Proof of Service, Filed](#)
01/22/2019 [Reply to Brief, Filed](#)
01/22/2019 [Proof of Service, Filed](#)
01/25/2019 **Motion Hearing** (8:30 AM) (Judicial Officer Hathaway, Dana Margaret)
Result: Held
01/25/2019 **Motion Denied, Order to Follow** (Judicial Officer: Hathaway, Dana Margaret)
02/01/2019 [Proof of Service, Filed](#)
02/05/2019 [Order Denying Motion, Signed and Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Motion for Summary Judgment/Disposition, Filed](#)
02/26/2019 [Brief, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Notice of Hearing, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Exhibit, Filed](#)
02/26/2019 [Proof of Service, Filed](#)
02/27/2019 **Settlement Conference** (10:00 AM) (Judicial Officer Hathaway, Dana Margaret)
01/02/2019 Reset by Court to 02/26/2019
02/26/2019 Reset by Court to 02/27/2019
Result: Held
02/27/2019 [Miscellaneous Pleadings, Filed](#)
02/27/2019 [Proof of Service, Filed](#)
03/01/2019 [Notice of Hearing, Filed](#)
03/01/2019 [Proof of Service, Filed](#)
03/04/2019 [Praecipe, Filed](#) (Judicial Officer: Hathaway, Dana Margaret)
03/05/2019 [Motion for Stay of Proceedings, Filed](#)
03/05/2019 [Proof of Service, Filed](#)
03/06/2019 **Settlement Conference** (10:00 AM) (Judicial Officer Hathaway, Dana Margaret)
Result: Held
03/06/2019 [Notice of Hearing, Filed](#)
03/06/2019 [Notice of Hearing, Filed](#)
03/06/2019 [Proof of Service, Filed](#)
03/06/2019 [Proof of Service, Filed](#)

03/07/2019 [Answer to Motion, Filed](#)
 03/07/2019 [Proof of Service, Filed](#)
 03/07/2019 [Praecipe, Filed](#) (Judicial Officer: Hathaway, Dana Margaret)
 03/07/2019 [Praecipe, Filed](#) (Judicial Officer: Hathaway, Dana Margaret)
 03/15/2019 **Motion Hearing** (8:30 AM) (Judicial Officer Hathaway, Dana Margaret)
 Result: Held
 03/15/2019 **Motion Granted, Order to Follow** (Judicial Officer: Hathaway, Dana Margaret)
 03/18/2019 [Proof of Service, Filed](#)
 03/20/2019 [Closed/Final - Ord for Stay of Proceedings, Signed and Filed](#)
 04/19/2019 **CANCELED Motion Hearing** (8:30 AM) (Judicial Officer Hathaway, Dana Margaret)
Dismiss Hearing or Injunction
 04/25/2019 [Higher Court Order/Decision Received by Circuit Court](#)
 05/08/2019 **CANCELED Settlement Conference** (10:00 AM) (Judicial Officer Hathaway, Dana Margaret)
Dismiss Hearing or Injunction
 05/10/2019 **CANCELED Motion Hearing** (8:30 AM) (Judicial Officer Hathaway, Dana Margaret)
Dismiss Hearing or Injunction
 06/05/2019 [Transcript, Filed](#)
 09/05/2019 [Letter, Filed](#)
 09/05/2019 [Claim of Appeal, Filed](#)
 09/05/2019 [Proof of Service, Filed](#)
 05/07/2020 [Higher Court Order/Decision Received by Circuit Court](#)
 07/20/2020 [Appellant/Appellee Brief, Filed](#)
 07/20/2020 [Proof of Service, Filed](#)
 08/04/2020 **Review Hearing** (8:00 AM) (Judicial Officer Hathaway, Dana Margaret)
09/16/2019 Reset by Court to 01/27/2020
01/27/2020 Reset by Court to 04/21/2020
04/21/2020 Reset by Court to 08/04/2020
 Result: Reviewed by Court

FINANCIAL INFORMATION

Plaintiff Olden, Fatima			
	Total Financial Assessment		385.00
	Total Payments and Credits		385.00
	Balance Due as of 12/16/2021		0.00
02/06/2018	Transaction Assessment		260.00
02/06/2018	eFiling	Receipt # 2018-10064	(260.00)
05/02/2018	Transaction Assessment		20.00
05/02/2018	eFiling	Receipt # 2018-35143	(20.00)
10/17/2018	Transaction Assessment		20.00
10/17/2018	eFiling	Receipt # 2018-86608	(20.00)
11/02/2018	Transaction Assessment		20.00
11/02/2018	eFiling	Receipt # 2018-91585	(20.00)
02/27/2019	Transaction Assessment		20.00
02/27/2019	eFiling	Receipt # 2019-16153	(20.00)
03/05/2019	Transaction Assessment		20.00
03/05/2019	eFiling	Receipt # 2019-18174	(20.00)
09/06/2019	Transaction Assessment		25.00
09/06/2019	eFiling	Receipt # 2019-71990	(25.00)



Case Header

Case Number

COA #347798

MSC #161691

Case Status

MSC Pending on Application

COA Case Concluded; File Open

Consolidated Appeals

COA #347061 Case Concluded; File Open

Published Case Citation(s)

332 Mich App 289

Parties & Attorneys to the Case - Court of Appeals

1

OLDEN FATIMA

Plaintiff - Appellee

Attorney(s)

LAURILA ANDREW J

#78880, Retained

2

CORRECTIONS DEPARTMENT OF

Defendant - Appellant

Attorney(s)

ASBENSON KENDELL S

#81747, Attorney General

3

STATE OF MICHIGAN

Defendant - Appellant

Attorney(s)

Same

4

MACOMB CORRECTIONAL FACILITY WARDEN

Defendant - Appellant

Attorney(s)

Same

Parties & Attorneys to the Case - Supreme Court

1

MCKENZIE KENNETH

Plaintiff

Attorney(s)

Andrew John Laurila

#78880

2
CORRECTIONS DEPARTMENT OF

Defendant

Attorney(s)

B. Eric Restuccia, Dep Sol Gen

#49550

3
STATE OF MICHIGAN

Defendant

4
MACOMB CORRECTIONAL FACILITY WARDEN

Defendant

5
HAAS RANDALL

Defendant

[Redacted]

[Redacted]

[Redacted]

[Redacted]

03/19/2019 **6** Answer - Application

COA 347798 MSC 161691

FATIMA OLDEN V DEPARTMENT OF CORRECTIONS

Lower Court/Tribunal

WAYNE CIRCUIT COURT

Judge(s)

HATHAWAY DANA MARGARET

Docket

Case Documents

Case Information



Case Header

Case Number

COA #347798

MSC #161691

Case Status

MSC Pending on Application

COA Case Concluded; File Open

Consolidated Appeals

COA #347061 Case Concluded; File Open

Published Case Citation(s)

Parties & Attorneys to the Case - Court of Appeals

1

OLDEN FATIMA

Plaintiff - Appellee

Attorney(s)

LAURILA ANDREW J

#78880, Retained

2

CORRECTIONS DEPARTMENT OF

Defendant - Appellant

Attorney(s)

ASBENSON KENDELL S

#81747, Attorney General

3

STATE OF MICHIGAN

Defendant - Appellant

Attorney(s)

Same

4

MACOMB CORRECTIONAL FACILITY WARDEN

Defendant - Appellant

Attorney(s)

Same

Parties & Attorneys to the Case – Supreme Court

1

MCKENZIE KENNETH

Plaintiff

Attorney(s)

Andrew John Laurila

#78880

2

CORRECTIONS DEPARTMENT OF

Defendant

Attorney(s)

B. Eric Restuccia, Dep Sol Gen

#49550

3

STATE OF MICHIGAN

Defendant

4

MACOMB CORRECTIONAL FACILITY WARDEN

Defendant

5

HAASRANDALL

Defendant

SHOW 1 MORE PARTIES +

COLLAPSE ALL

EXPAND ALL

02/26/2019	1	AppForLeaveto Appeal- Civil	+
02/05/2019	2	OrderAppealedFrom	+
02/27/2019	3	TranscripRequestedBy AttyOr Party	+
03/19/2019	6	Answer- Application	+
03/20/2019	7	StenoCertificate- Tr RequestReceived	+
03/26/2019	4	TranscripRemindeRequest	+
03/26/2019	5	Motion.Consolidate	+
04/04/2019	10	Replyto Answer- Application	+
04/16/2019	12	Submitteðn MotionDocket	+

RECEIVED by MSC 12/20/2021 4:03:47 PM

04/23/2019	13 Order: Application - Grant	+
04/23/2019	15 Order: Consolidate - Grant	+
05/23/2019	16 Docketing Statement MCR 7.204H	+
06/03/2019	17 Transcript Overdue - Notice to Reporter	+
06/04/2019	18 Notice Of Filing Transcript	+
07/29/2019	19 Brief: Appellant	+
09/03/2019	20 Noticed	+
09/03/2019	21 Brief: Appellee	+
09/10/2019	22 Electronic Record Rejected	+
09/11/2019	23 Electronic Record Filed	+
09/23/2019	25 Brief: Reply	+
03/03/2020	27 Submitted on Case Call	+
03/03/2020	28 Oral Argument Audio	+
05/07/2020	31 Opinion - Per Curiam - Published	+
07/20/2020	33 Other	+
07/21/2020	32 Application for Leave to SCt	+
08/17/2020	34 Other	+

04/27/2021	35 Supreme Court Order: Order Directing Response	+
04/30/2021	36 Michigan Appeals Reports Publication	+
09/29/2021	37 Supreme Court Order: MOAA -Oral Argument on Lv Appl	+