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DISTRICT III

August 26, 2025

To:

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Circuit Court Judge
Electronic Notice

Nathan A. Liedl
Clerk of Circuit Court
Chippewa County Courthouse
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Thomas R. Socha 325609
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You are hereby notified that the Court has entered the following opinion and order:

2024AP336 Thomas R. Socha v. Kevin Carr (L. C. No. 2022CV319)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Thomas Socha, pro se, appeals from a summary judgment order that dismissed his declaratory judgment action against Kevin Carr (the Secretary of the Wisconsin Department of Corrections (DOC)), Sarah Cooper (Administrator of the Division of Adult Institutions (DAI)), and Angela Hansen (Director of the Bureau of Offender Classification and Movement (BOCM)) (collectively, the prison officials). The action challenged the validity of a provision in an instrument used by prison officials to determine Socha's security classification level. Based

upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

This court reviews summary judgment decisions de novo, applying the same legal standard and methodology employed by the circuit court. ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. Assuming the pleadings are sufficient, we examine the moving party's supporting materials (such as depositions, answers to interrogatories, admissions, and affidavits) to determine whether they establish a prima facie case for summary judgment, and if so, whether the materials submitted by the opposing party are sufficient to place in dispute any material facts that would require a trial. ***Lambrecht v. Estate of Kaczmarczyk***, 2001 WI 25, ¶24, 241 Wis. 2d 804, 623 N.W.2d 751; *see also* WIS. STAT. § 802.08(2).

Here, there is no dispute as to the relevant facts, only their legal significance. Socha is currently serving a life sentence in the Wisconsin prison system and will be eligible for extended supervision in 2027. The Wisconsin Administrative Code provides, in relevant part, that "[a]n inmate serving a life sentence shall … be within 5 years of extended supervision eligibility … prior to consideration for a minimum or community custody classification." WIS. ADMIN. CODE § DOC 302.12. (through Jul. 2025).[2]

In 2022, DAI implemented a new Instrument for Custody Classification (IFCC) that would prevent DOC personnel from placing inmates with certain "mandatory restrictors" into

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

[2] All references to WIS. ADMIN. CODE § DOC are to the July 2025 register.

specified custody classifications. The mandatory restrictor provision at issue in this case bars inmates who have not reached their extended supervision eligibility date and have not received an indication from the sentencing court of upcoming release from being classified at the minimum and minimum community custody levels.

Based upon the mandatory restrictor provision, Socha's social worker rescinded a prior recommendation that Socha be considered for minimum custody. Socha then brought this declaratory judgment action seeking to invalidate the mandatory restrictor provision because, he alleged, the provision (1) conflicted with the Wisconsin Administrative Code; (2) exceeded the DOC's rulemaking authority; (3) failed to comply with administrative rulemaking procedures; and (4) violated his right to equal protection and his liberty interest under the due process clause of the Fourteenth Amendment. The circuit court dismissed the action after explicitly determining that the mandatory restrictor provision was not a rule subject to rulemaking procedures because it did not affect a private right or interest and impliedly rejecting Socha's other claims.

On appeal, Socha renews his claims that the mandatory restrictor provision should be declared invalid pursuant to WIS. STAT. § 227.40(4)(a) because: (1) it is an unpromulgated "rule" within the meaning of WIS. STAT. § 227.01(13); and (2) it conflicts with WIS. ADMIN. CODE § DOC 302.12.[3] The prison officials dispute both propositions.

[3] Socha acknowledges on appeal that he has no substantive liberty interest at stake, and he does not renew his Fourteenth Amendment claim. He has listed three additional issues that are actually sub-issues relating to the criteria for determining whether the mandatory restrictor qualifies as a rule.

WISCONSIN STAT. § 227.40(4)(a) provides that a court shall declare an administrative rule or guidance document invalid if the court finds that it "violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated or adopted without compliance with statutory rule-making or adoption procedures." WISCONSIN STAT. § 227.01(13) defines a rule to mean "a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency." However, § 227.01(13)(a) excludes from the definition of a rule any action or inaction of an agency that "[c]oncerns the internal management of an agency and does not affect private rights or interests."

When determining whether an agency action constitutes a rule, courts conduct a five-part inquiry, examining whether the agency action is "(1) a regulation, standard, statement of policy or general order; (2) of general application; (3) having the effect of law; (4) issued by an agency; (5) to implement, interpret or make specific legislation enforced or administered by such agency." ***Cholvin v. DHFS***, 2008 WI App 127, ¶22, 313 Wis. 2d 749, 758 N.W.2d 118. A document has the force or effect of law as a rule where "criminal or civil sanctions can result as a violation; where licensure can be denied; and where the interest of individuals in a class can be legally affected through enforcement of the agency action." ***Id.***, ¶26.

In contrast, guidance documents[4] "impose no obligations, set no standards, and bind no one. They are communications about the law—they are not the law itself." ***Wisconsin Mfrs. & Com., Inc. v. Wisconsin Nat. Res. Bd.***, 2025 WI 26, ¶36, 416 Wis. 2d 561, 21 N.W.3d 718. The rulemaking procedures do not apply to guidance documents because such documents inherently lack the force of law. ***Id.***, ¶35.

Here, the prison officials do not dispute that the mandatory restrictor directing them not to assign minimum or community security classifications to inmates serving life sentences constitutes a policy of general application issued by an agency to implement legislation administered by the agency. The prison officials offer two reasons why the mandatory restrictor is not a rule subject to rulemaking. First, they contend that the mandatory restrictor is a part of a guidance document that lacks the effect of law, thus failing to satisfy the third ***Cholvin*** element.[5] Second, they contend that the mandatory restrictor concerns the internal management of an agency and does not affect an inmate's private rights or interests, thus excluding it from the definition of a rule under WIS. STAT. § 227.01(13)(a). We agree with the second proposition.

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[4] A guidance document is defined as "any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that … [e]xplains the agency's implementation of a statute or rule enforced or administered by the agency." WIS. STAT. § 227.01(3m)(a).

[5] Socha asserts that the prison officials forfeited this argument by failing to raise it in the circuit court. The forfeiture rule applies only to appellants, however. *See* ***Leon's Frozen Custard, Inc. v. Leon Corp.***, 182 Wis. 2d 236, 246 n.2, 513 N.W.2d 636 (Ct. App. 1994) (stating that appellate courts do not reverse cases on appeal based upon theories never argued to the circuit court). In contrast, a respondent may advance for the first time on appeal any argument that would sustain the circuit court's ruling. ***Blum v. 1st Auto & Cas. Ins. Co.,*** 2010 WI 78, ¶27 n.4, 326 Wis. 2d 729, 786 N.W.2d 78. In any event, we need not address the applicability of the forfeiture rule because we decide the case on other grounds.

We note that neither party has provided this court with any authority discussing whether there is a "private right or interest" to a particular security classification within the meaning of WIS. STAT. § 227.01(13)(a). Instead, each party makes analogies to other contexts in which security classifications have been addressed.

Socha relies upon ***State ex rel. Adell v. Smith***, 2001 WI App 168, 247 Wis. 2d 260, 633 N.W.2d 231, to support his contention that he has a private right or interest in his security classification. In ***Adell***, this court concluded that an inmate who had been adversely affected by having erroneous negative information considered as part of his inmate security classification review stated a claim upon which relief could be granted by certiorari writ. ***Id.***, ¶11. We noted that an inmate's security classification impacts his or her program review classification prospects, his or her potential parole prospects, and the consideration given to his or her future prison work assignments. ***Id.*** However, the remedy in that case was *not* to afford the inmate a particular security classification, it was to remand to have prison officials consider the correct information when making the security classification decision. ***Id.***

The prison officials cite ***Meachum v. Fano***, 427 U.S. 215, 224-25 (1975), for the proposition that an inmate has no substantive liberty interest under the Fourteenth Amendment in being placed in any particular prison (which they appear to extrapolate to any security classification that would affect the inmate's institutional placement). They acknowledge that procedural due process requires that the assignment of a security classification cannot be arbitrary, given the factors and procedures set forth in WIS. ADMIN. CODE §§ DOC 302.11 and 302.17. *See, e.g.*, ***Richards v. Graham***, 2011 WI App 100, ¶33, 336 Wis. 2d 175, 801 N.W.2d 821. However, they point out that any consideration of an inmate's individualized security classification factors is always subject to the authority of prison officials to take into account the

DOC's "security, resource or bed needs." WIS. ADMIN. CODE §§ DOC 302.17(2), 302.18. Thus, they contend, an inmate's security classification is ultimately a function of the DOC's internal management of its prison population and not a private right or interest of the inmate within the meaning of WIS. STAT. § 227.01(13)(a).

We find the prison officials' arguments to be more persuasive. Prison officials have the authority to restrict security classifications based upon the DOC's institutional security, resources or bed needs. The mandatory restrictor directing prison officials not to assign minimum or community security classifications to inmates serving life sentences exercises that authority. The mandatory restrictor does not affect an inmate's personal rights or interests because an inmate has no right to a security classification that conflicts with the institution's asserted needs. This circumstance is consistent with the general proposition that provisions in the Wisconsin Administrative Code are directives to prison administrators, not vested rights of prisoners. ***Richards v. Cullen***, 152 Wis. 2d 710, 713, 449 N.W.2d 318 (Ct. App. 1989). We therefore conclude that the mandatory restrictor at issue here is an internal management tool excluded from the definition of a rule and is therefore not subject to rulemaking.

We further conclude that the mandatory restrictor does not conflict with WIS. ADMIN. CODE § DOC 302.12. That code provision merely sets a minimum threshold of being within five years of extended supervision before an inmate serving a life sentence can be considered for a minimum or community level security classification. Nothing in the code provision requires that an inmate must be considered for a minimum or community level security classification once that threshold is met. In short, the mandatory restrictor does not conflict with § DOC 302.12 because it does not direct that an inmate be considered for a minimum or community level security classification before being within five years of extended supervision.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals