



***Riley v. Carol***  
**03C-05-014 HDR**  
June 2, 2003

**ORDER**

(1) Plaintiff James W. Riley (“Riley”) has petitioned to proceed *in forma pauperis* in an action for declaratory judgment and Writ of Mandamus to prohibit the Department of Correction from charging his inmate account for legal photocopying and medical services.

(2) In his complaint which was filed on May 9, 2003, Riley claims that his Sixth and Eighth Amendment rights are being violated by the State’s policy of charging an inmate’s account \$0.25/page for legal photocopying, a \$4.00 per visit medical appointment co-pay, and \$2.00 for all non-prescription medication. He claims that, as a death-row inmate, he was not permitted to participate in any of the inmate work programs to earn money. He further claims that the state was debiting his inmate account for these necessary services regardless of his inability to participate in the work programs set forth in 11 *Del. C.* § 6532 and that this will put him in such debt that he will never be able to pay for personal hygiene items at the commissary.

Without alleging that he has been made to live without necessary medical care, legal supplies, or hygiene products, he states that he is being forced to choose between his right to petition the courts for redress and his right to necessary medical care and hygiene needs. Riley’s Inmate Grievance, filed March 13, 2003, states that the practice has been occurring from 1998 until the present-although he has been on death row since 1983. The grievance was denied as untimely.

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(3) Riley cites *Gluth v. Kanagas*,<sup>1</sup> a Ninth Circuit case that holds that a policy that requires a prisoner to choose between purchasing hygiene supplies and essential legal supplies is unconstitutional. In *Gluth*, Plaintiffs demonstrated that they could not obtain paper, pens, photocopying, and postage unless their inmate account balance was less than twelve dollars, in addition to showing that unreasonable limitations were placed on their access to legal services and the law library. The court found that the basic necessary personal items and legal supplies for inmates cost \$46 per month, and issued an order raising the indigency level to that amount; this permitted inmates with less than \$46 to receive free legal supplies. The District Court did not elaborate on actual injury, and the Ninth Circuit summarily determined actual injury had occurred without discussing any specific injury.<sup>2</sup>

However, the United States Supreme Court has held more recently that an inmate must show actual injury to state a Constitutional claim.<sup>3</sup> Furthermore, in 1997 the Third Circuit expressly approved a system by which an inmate's account was debited for legal photocopying resulting in a negative balance in *Reynolds v.*

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<sup>1</sup> 951 F.2d 1504 (9th Cir. 1991).

<sup>2</sup> “The inmates have satisfied this requirement, as they have alleged in their uncontroverted statement of facts that ‘non-indigent inmates without funds have cases that go unfiled or have been dismissed due to the high cost of postage, legal copies, and legal supplies.’” *Id.* at 1509.

<sup>3</sup> *Lewis v. Casey*, 518 U.S. 343 (1996).

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*Wagner*.<sup>4</sup> The Third Circuit went on to say that to state a Constitutional Claim:

the inmates must point to evidence of actual or imminent interference with access to the courts--for example, evidence that an inmate was not able to file his complaint in time because he could not afford the cost of postage or that an inmate was not able to file legal papers because he could not photocopy certain documents.<sup>5</sup>

Riley has not alleged any actual or imminent interference with his access to the courts.

(4) Riley was sentenced recently to life imprisonment upon his retrial and conviction of Murder in the First Degree.<sup>6</sup> As a result he will now presumably be permitted to work within the prison. His complaint fails to state a cause of action under *Reynolds v. Wagner*. Therefore, the Petition to Proceed *in forma pauperis* is ***DENIED*** and the Complaint is ***DISMISSED***.

**IT IS SO ORDERED.**

/s/ Henry duPont Ridgely

President Judge

cmh

oc: Prothonotary

xc: Order distribution

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<sup>4</sup> *Reynolds v. Wagner*, 128 F.3d 166 (3d Cir. 1997).

<sup>5</sup> *Id.* at 183.

<sup>6</sup> Sentence Order, IK82-06-0838, Vaughn, R.J. (May 19, 2003).