

UPDATE: Judge rules whistleblower was mistreated

The Capital Times [Steven Elbow](#) — 1/17/2008 3:09 pm

An administrative law judge ruled this week that state Department of Corrections managers mounted a concerted campaign to undermine the credibility of a nurse scheduled to testify in a John Doe investigation of inmate medical care.

The nurse, Suzanne Ward of Montello, filed a whistleblower complaint in fall 2005 alleging that Corrections officials improperly disciplined her for concocted workplace rule violations and that the department's chief legal counsel, Kevin Potter, tried to undermine her testimony by fraudulently telling the Columbia County judge conducting the John Doe investigation that she was under investigation for fraternizing with an inmate.

Potter then sent a copy of the letter he had written to the judge on the topic to the inmate involved, which the judge said was "calculated to undermine Ward's professionalism, credibility and safety," and that the letter itself "borders on a threat of unlawful retaliation" under Wisconsin law.

Corrections officials did not return a message regarding whether they plan to appeal the ruling before the Labor and Industry Review Commission, the appellate body that deals with workplace complaints.

According to the findings of fact filed this week by Administrative Law Judge Debra Little Cohn, an inmate contesting his treatment for an abdominal ailment subpoenaed Ward to appear at the John Doe hearing, which was scheduled for Sept. 14, 2005.

Under Wisconsin law, inmates acting as their own attorneys have subpoena powers.

The inmate, who was not named in the complaint, issued the subpoena after obtaining a letter written by Ward complaining about the physician who was treating the inmate. Ward had given the letter to her supervisor, and it somehow ended up in the inmate's medical file.

Ward explained to Department of Corrections investigators that the inmate obtained the document concerning the physician's behavior from his medical file, and that she had seen it there herself. But when she went back to the file to locate the document during an internal investigation against her, it had been removed, according to the findings of fact.

Ward claimed to have put her complaint about the physician in a locked mailbox for her supervisor and made no copies. But the inmate said Ward gave the letter to him, and based on his claim, Corrections officials accused her of providing the inmate with a copy of the document.

Officials also accused her of improperly filling out medical review forms and using the wrong form for allowing the inmate to review his medical records, even though the health services unit at Columbia Correctional Institute near Portage didn't even have the correct form on file. She was also accused of allowing the inmate to make copies of his medical records without charge, when he was supposed to pay. Ward claimed she didn't know she was supposed to charge the inmate in that situation.

In addition, eight days before Ward was scheduled to testify, Potter sent a letter to Columbia County Judge Dan George telling him that Ward was under investigation for fraternizing with the same inmate, which was not true, according to Judge Cohn. Potter then sent a copy of the letter to the inmate, which the ruling says was a violation of Corrections confidentiality policies.

Cohn wrote that she found it "highly unusual that DOC's chief legal counsel would attempt to influence a judge's assessment of a witness' testimony prior to the hearing date by informing him that she was being investigated for fraternization, an assertion that was not true."

Corrections officials then reprimanded Ward, saying she improperly disclosed confidential information, falsified records and violated other policies "including but not limited to DOC Fraternization Policy and Arrest and Conviction Policy."

Cohn blasted the department on several counts.

She wrote that she found it "astonishing" that Columbia Correctional Institution (CCI) management would take the inmate's word about how he obtained Ward's letter about the physician over Ward's.

"It is apparent ... that DOC management would normally subject an inmate's accusations about an employee to careful scrutiny," Cohn wrote. "That did not occur in this case."

According to the findings of fact, although the department has a policy covering how health care providers are supposed to respond to legal documents, the department provided no help to Ward in dealing with the subpoena.

She said the department's treatment of Ward was a calculated effort to retaliate.

"Although Ward attempted to obtain guidance from CCI's management staff and the DOC's legal staff regarding her obligations under the subpoena ... CCI management and DOC staff members were more interested in letting her 'twist slowly in the wind' and then searching for a technical basis on which to discipline her," Cohn wrote.

She found Ward to be an "extremely credible witness," calling her "thoughtful, articulate, intelligent and highly ethical."

Meanwhile, the prison employee that Warden Gregory Grams chose to conduct the investigation against Ward, Management Services Director Amy Millard, was evasive and not "a person of intellectual acuity" during testimony in the case, Cohn wrote.

She wrote that she found it surprising that Grams would choose Millard to investigate alleged work rule violations by a prison nurse.

Cohn ordered the department to clear Ward's personnel file of records pertaining to the discipline imposed on her and gave Corrections officials 30 days to file a compliance report. She also ordered the department to pay attorney fees for Ward.

Ward's attorney, Jeff Scott Olson, said Ward quit working for the department in December 2006.

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