



December 8, 2015 – Walworth County Board of Supervisors

**Report of the County Clerk Regarding  
Communications Received After the Agenda Mailing**

The following items were placed on Supervisors' desks and are attached to this cover sheet:

County Clerk

Kimberly S. Bushey  
County Clerk

- November 10, 2015 County Board Meeting Minutes
- Notice of Injury – Brenda Thurin – To be referred to the Executive Committee
- Summons in a Civil Action – Matthew Dennis v. Kurt Picknell, Walworth County and Michael Dittman – To be referred to the Executive Committee
- *Walworth County Aging & Disability Resource Center News*, December 2015 – To be placed on file

*These items were received after the agenda mailing before the meeting. Other items that were placed on the Supervisors' desks at the meeting are not included on this report. Please contact the County Clerk's office for information regarding those items.*

**NOVEMBER 10, 2015  
WALWORTH COUNTY BOARD OF SUPERVISORS  
MEETING**

The Walworth County Board of Supervisors meeting was called to order by Chair Russell at 6:03 p.m. in the County Board Room at the Walworth County Government Center, 100 W. Walworth Street, Elkhorn, Wisconsin.

Roll call was conducted and the following Supervisors were present: Richard Brandl, Tim Brellenthin, Kathy Ingersoll, Daniel G. Kilkenny, Kenneth H. Monroe, Joe Schaefer, Rick Stacey, Charlene Staples, David A. Weber, Paul Yvarra, and Chair Nancy Russell. A quorum was established.

Charlene Staples, Walworth County Board Supervisor, District #5, delivered the invocation.

**Amendments, Withdrawals, and Approval of Agenda**

On motion by Supervisor Brandl, second by Supervisor Schaefer, the agenda was approved by voice vote with no withdrawals.

**Approval of the Minutes**

On motion by Supervisor Brandl, second by Supervisor Weber, the October 13, 2015 County Board Meeting minutes were approved by voice vote.

On motion by Supervisor Stacey, second by Supervisor Staples, the October 29, 2015 Public Budget Hearing minutes were approved by voice vote.

**Comment Period by Members of the Public Concerning Items on the Agenda**

There was none.

**Special Order of Business**

1. Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award for Fiscal Year 2015

Chair Russell presented the GFOA Distinguished Budget Presentation Award for Fiscal Year 2015 to Nicki Andersen, Deputy County Administrator-Finance, Jessica Conley, Comptroller, and Stacie Johnson, Finance Manager-Budget.

**Appointments/Elections**

1. Agriculture and Extension Education Committee
  - Kelly Pickel – Two-year term to begin upon confirmation and end on December 31, 2017 (Recommended by the Executive Committee 5-0)
2. Director of Central Services
  - Eric Nitschke (Recommended by the Public Works Committee 5-0 and the Human Resources Committee 5-0)

On motion by Supervisor Schaefer, second by Supervisor Weber, the appointments to the Agriculture and Extension Education Committee and Director of Central Services were approved by voice vote. Nancy Russell introduced and welcomed Mr. Nitschke.

**Communications and Matters to be Referred**

Chair Russell announced that unless there was a request for an individual communication to be discussed, the Clerk would dispense with the reading of each title and the Chair would direct that all communications be referred or placed on file as indicated on the agenda.

1. Claims Received After Agenda Mailing
2. Claims: a) Notice of Receiver's Motions for Entry of an Order Approving Seventh Extension of Financing Agreement, Order Authorizing Receiver to Borrow Funds or Use Cash Collateral and to Grant Additional Liens and Security Interests, and Final Order Authorizing Receiver to Borrow Funds or Use Cash Collateral and to Grant Additional Liens and Security Interests, and for Entry of an Order Extending Time for the Receiver to File the Settlement of Receiver's Accounts – B. R. Amon & Sons, Inc., Amon & Sons, Inc., Amon Land Company, LLC, Lake Mills Blacktop, Inc.; b) Scheduling Questionnaire – LSCG Fund 17, LLC vs Mann Bros., et al (To be referred to the Executive Committee)
3. Sawyer County Resolution #10-2015 – Resolution to Repeal Statutory Provisions Enacted in the State of Wisconsin 2015-2017 Budget Concerning Shoreland Zoning Standards (Act 55)(To be referred to County Zoning Agency)
4. Waushara County Resolution No. 30-10-15 – Resolution to Repeal Statutory Provisions in the State of Wisconsin 2015-2017 Budget Relating to Shoreland Zoning Standards (Sections 1922AM-1922L of 2015 Wisconsin Act 55) and the attached Resolution 23-06-15 (To be referred to County Zoning Agency)
5. Kewaunee County Resolution No. 10-10-15 – Resolution Urging Amendment to §43.12 County Payment for Library Services (To be referred to the Executive Committee)
6. Winnebago County Resolution No. 214-102015 – Urge the Wisconsin Legislature to Transfer Jurisdiction of 17-Year-Old Delinquent Offenders Back into the Juvenile Justice System from the Adult Corrections System (To be referred to the Executive Committee)
7. Wood County Resolution 15-10-7 – Resolution to encourage legislature to update the Public Records law by amending §19.36 (To be referred to the Executive Committee)
8. Outagamie County Resolution No. 49-2015-16 – Supporting proposed legislation requiring the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules requiring special packaging, as defined under current law, for liquid nicotine (To be referred to the Health and Human Services Board)
9. Outagamie County Resolution No. 48-2015-16 – Opposing proposed legislation prohibiting any employer, including state and local governments, from demoting, suspending, discharging, or otherwise discriminating against an employee or contractor, intern or volunteer, for refusing to be vaccinated against seasonal influenza (To be referred to the Human Resources Committee)
10. Correspondence from Michael Hurlburt – Resignation from the Walworth County Park Committee. (To be referred to the Executive Committee)
11. Report of the County Clerk Regarding Communications Received by the Board and Recommended to be Placed on File.
  - Price County Resolution 56-15 – Supporting the Funding of Pay Progression for Assistant District Attorneys and Creation and Funding of Additional Assistant District Attorney Positions (To be placed on file)
  - Communication from Public Service Commission of Wisconsin regarding Application of American Transmission Company LLC to Build and Place in Service a New 138 kV Transmission Line Between the Spring Valley Substation in Kenosha County and the North Lake Geneva Substation in Walworth County, Wisconsin, to Build a New 138/69 kV Substation in Kenosha County, Wisconsin, and to Build or Rebuild Other Lines and Facilities in the Project Area (To be placed on file)
12. Report of the County Clerk Regarding Communications Received by the Board After the Agenda Mailing
  - Res. No. 53-11/15 – Approving an Employment Agreement By and Between Walworth County and Eric Nitschke as Director of Central Services – *Vote Required: Majority* (Recommended by the Human Resources Committee 5-0)
  - Notice of Claim and Claim for Damages – Alexei Strelchenko (To be referred to the Executive Committee)
  - Town of Bloomfield Ordinance No. 2015-O-1114 – Ordinance Amending the Zoning Ordinance of the Town of Bloomfield Tax Key MB 3600009, N199 Williams Road (To be referred to the County Zoning Agency)
  - Town of Bloomfield Resolution No. 2015-R-12 – Conditional Use Permit, American Fireworks, N199 Williams Road, Genoa City, WI (To be referred to the County Zoning Agency)
  - Oconto County Resolution #98-15 – Resolution Supporting the Repeal of Statutory Provisions Enacted in the State of Wisconsin 2015-2017 Budget Sections 1922B-1922L, 2015 Act 55 Concerning the Zoning of Shorelands on Navigable Waters (To be referred to the County Zoning Agency)
  - Washburn County Resolution No. 76-15 – Resolution to Repeal the Requirements of Act 55 Related to Shoreland Zoning (To be referred to the County Zoning Agency)

- Langlade County Resolution #62-2015 – Support Efforts to Repeal or Amend Changes to Shoreland Zoning Standards as Contained in the 2015-2017 State Budget (Act 55) (To be referred to the County Zoning Agency)
  - Correspondence from Brian A. Schuk of Wassel, Harvey & Schuk, LLP regarding Willow Run Condominium Association (To be referred to the County Zoning Agency)
  - Outagamie County Resolution No. 62-2015-16 – Resolution to oppose any legislation expanding the subpoena process (To be referred to the Executive Committee)
  - St. Croix County Emergency Resolution – Resolution Opposing 2015 Senate Bill 294, Dismantling the Government Accountability Board (To be placed on file)
  - Communication from Christine Lidbury, Wisconsin Women’s Council, State of Wisconsin – Human Trafficking in Wisconsin Building Resources for Hope Film Screening & Program (To be placed on file)
  - October 29, 2015 Walworth County Board of Supervisors Public Budget Hearing Minutes
  - *Walworth County Aging & Disability Resource Center News*, November 2015 (To be placed on file)
13. Report of the County Clerk Regarding Zoning Petitions (To be referred to the County Zoning Agency)
- Lakeland Community Church – Owner, Pastor Josh Amstutz – Applicant, Delavan Township. Rezone approximately 26.17 acres of A-2 Agricultural Land District to P-1 Recreational Park District
  - Mark R. Uttech – Owner – Spring Prairie Township. Rezone approximately 19 acres of A-2 Agricultural Land District to approximately 14.5 acres C-2 Upland Resource Conservation District and approximately 4.5 acres of C-1 Lowland Resource Conservation District

**Unfinished Business**

**New Business**

**Reports of Standing Committees**

**County Zoning Agency Report of Proposed Zoning Amendments**

1. Robert C. and Gail A. Hanson Trust – Owner, Robert C. and Gail A. Hanson trustees – Applicant, Section 21, Darien Township. Amend the 2035 Land Use Plan Map to change 5.39 acres from AP to C – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)
2. Richard J. Stacey, Jr. – Owner, Section 36, Troy Township. Amend the 2035 Land Use Plan Map to change 19.97 acres from AG3 to AG2 – Approved 5-0 (Rick Stacey abstained)(October 15, 2015 Zoning Agency Hearing)
3. John P. Bashaw, Corinne G. Lorian – Owners, Section 26, Troy Township. Amend the 2035 Land Use Plan Map to change 19.35 acres from AG3 and RU to AG2 – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)
4. Lakeland Community Church, Inc. – Owner, Pastor Josh Amstutz – Applicant, Section 25, Delavan Township. Amend the 2035 Land Use Map to change 26.17 acres from AG3 to G – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)
5. Northwestern University Settlement Association – Owner, Section 31, Delavan Township. Amend the 2035 Land Use Plan Map to change .44 acres and .56 acres from RU to P – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)
6. Hilltop Securities, LLC, Steve Waddell WW Trucking – Owner, Warren Hansen – Applicant/Engineer, Section 33, Darien Township. Rezone 10.36 acres from A-4 to M-2 – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)
7. Eric and Keri Schmidt – Owners, Section 1, Sugar Creek Township. Rezone approximately .5 acres from A-2, C-1 and C-4 to A-2, C-1 and C-4 – Approved 6-0 (October 15, 2015 Zoning Agency Hearing)

Supervisor Stacey requested that, Item #2, Richard J. Stacey, Jr., be voted on separately.

On motion by Supervisor Brandl, second by Supervisor Schaefer, Item #2 of the County Zoning Agency Report of Proposed Zoning Amendments, was approved as recommended by the County Zoning Agency by voice vote. (Supervisor Rick Stacey abstained)

On motion by Supervisor Stacey, second by Supervisor Weber, Items #1, #3, #4, #5, #6 and #7 of the County Zoning Agency Report of Proposed Zoning Amendments, were approved as recommended by the County Zoning Agency by voice vote.

### **Executive Committee**

1. Ord. No. 952-11/15 – Amending Section 2-45 of the Walworth County Code of Ordinances Relating to County Board Supervisor Compensation for Supervisors Elected in 2016 – *Vote Required: Two-thirds* (Recommended by the Executive Committee 3-1)
2. Res. No. 44-11/15 – Endorsing the Comprehensive Economic Development Strategy (CEDS) for Southeastern Wisconsin: 2015-2020 – *Vote Required: Majority* (Recommended by the Executive Committee 5-0)
3. Res. No. 45-11/15 – Establishing a Committee of the Whole Meeting Date to Discuss Information Technology Issues – *Vote Required: Majority* (Recommended by the Executive Committee 5-0)
4. Res. No. 52-11/15 - Approving a Settlement Agreement in the Matter of *Michael P. Scholl and Christine L. Scholl v. Walworth County, et al.* – *Vote Required: Majority* (Bretl stated the resolution was recommended unanimously by the Executive Committee)

Supervisor Weber offered a motion, second by Supervisor Ingersoll, to approve, Item #1, Ord. No. 952-11/15. On motion by Supervisor Stacey, second by Supervisor Weber, **Ord. No. 952-11/15** was approved by unanimous consent.

On motion by Supervisor Weber, second by Supervisor Yvarra, Item #2, **Res. No. 44-11/15**; Item #3, **Res. No. 45-11/15**; Item #4, **Res. No. 52-11/15** were approved by voice vote.

### **Finance Committee**

1. Ord. No. 955-11/15 – Amending Section 30-156 of the Walworth County Code of Ordinances Relating to Acceptance of Donations to the UW-Extension Department – *Vote Required: Two-thirds* (Recommended by the Finance Committee 5-0)
2. Ord. No. 956-11/15 – Amending Section 30-150 of the Walworth County Code of Ordinances Relating to the Collection of Debt – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
3. Ord. No. 957-11/15 – Amending Section 30-286 of the Walworth County Code of Ordinances Relative to Fees – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
4. Ord. No. 958-11/15 – Amending Section 30-172(c)(2) of the Walworth County Code of Ordinances Relating to Committed Fund Balance Severance Payout – *Vote Required: Majority* (Recommended by the Finance Committee 4-0)
5. Res. No. 46-11/15 – Accepting the Donation of \$525 from the Elkhorn Fund to UW-Extension to Support the Parenting 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Year Newsletter Project – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
6. Res. No. 47-11/15 – Authorizing a Contract with the Wisconsin Department of Revenue for the Collection of Debt – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
7. Res. No. 48-11/15 – Authorizing Addition to Previously Established Pre-Approved Recurring Grants List Relative to the State of Wisconsin Strategic Initiative Grant – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
8. Res. No. 49-11/15 – Adopting the 2016 Appropriation of the Walworth County Budget and CIP Plan – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)
9. Res. No. 50-11/15 – Establishing the County Tax Levy to Support the 2016 Budget Appropriation – *Vote Required: Majority* (Recommended by the Finance Committee 5-0)

Supervisor Ingersoll offered a motion, second by Supervisor Weber, to approve, Item #1, Ord. No. 955-11/15. On motion by Supervisor Stacey, second by Supervisor Brandl, **Ord. No. 955-11/15** was approved by unanimous consent.

On motion by Supervisor Brandl, second by Supervisor Weber, Item #2, **Ord. No. 956-11/15**; Item #3, **Ord. No. 957-11/15**; Item #4, **Ord. No. 958-11/15**; Item #5, **Res. No. 46-11/15**; Item #6, **Res. No. 47-11/15**; and, Item #7, **Res. No. 48-11/15** were approved by voice vote.

Bretl gave a brief explanation of the procedures to follow relative to Item #8, Res. No. 49/11/15.

Supervisor Weber offered a motion, second by Supervisor Schaefer, to approve, Item #8, Res. No. 49-11/15. Supervisors had previously received the proposed budget amendments from the Finance Department.

Budget Amendment A: County Board – Supervisor Weber offered a motion, second by Supervisor Staples, to approve Budget Amendment A, to increase the County Board Chair’s compensation by \$2,300 for fiscal year 2016. The increase will be offset by a reduction in training, mileage and office supplies, resulting in a \$0 net levy impact. Discussion focused on clarification of the duties expected of the Chair for the additional compensation. Budget Amendment A was approved by voice vote. Net levy impact: 0.

Budget Amendment B: District Attorney – Supervisor Yvarra offered a motion, second by Supervisor Brandl to approve Budget Amendment B, to remove payment to the State for the Assistant District Attorney position and return the salary savings for the administrative position. The net levy impact of this amendment is \$0. Bretl stated this amendment would eliminate payment to the State of Wisconsin for the Assistant District Attorney’s position. The preliminary budget includes the deletion of an administrative support position allowing said funding to be used to fund an Assistant District Attorney position. Bretl stated this amendment would reverse the preliminary budget change.

District Attorney Daniel A. Necci spoke relative to the financial needs for the District Attorney’s Office. Discussion focused on the increase of population within Walworth County, volume of prosecutions, increase in crime, the addition of law enforcement, budget constraints at the county and state level, and concern that the County would be setting a precedent by providing funding for a position that is the State’s responsibility. Supervisor Schaefer requested a roll call vote.

A roll call vote was conducted. Total votes: 11. Ayes: 6 – Brandl, Brellenthin, Monroe, Stacey, Weber, and Russell; Noes: 5 – Kilkenny, Ingersoll, Schaefer, Staples, Yvarra; Absent: 0. Budget Amendment B was approved by roll call vote. Net levy impact: 0. There were no amendments from the floor.

**Item #8, Res. No. 49-11/15 as amended by budget amendments A & B**, was approved by voice vote.

On motion by Supervisor Weber, second by Supervisor Monroe, Item #9, **Res. No. 50-11/15** was approved by voice vote.

#### **Human Resources Committee**

1. Ord. No. 953-11/15 – Amending Section 15-17 of the Walworth County Code of Ordinances Relating to Authorized Positions By Department Based on the 2016 Budget – *Vote Required: Majority* (Recommended by the Human Resources Committee 4-0)
2. Ord. No. 954-11/15 – Amending Section 15-4 of the Walworth County Code of Ordinances Relating to the Definition of Non-Productive Time and Productive Time – *Vote Required: Majority* (Recommended by the Human Resources Committee 4-0)
3. Res. No. 51-11/15 – Approving Wage Rate for Limited Term Pre-Trial Diversion Coordinator – *Vote required: Majority* (Recommended by the Human Resources Committee 5-0)
4. Res. No. 53-11/15 – Approving an Employment Agreement By and Between Walworth County and Eric Nitschke as Director of Central Services – *Vote required: Majority* (Recommended by the Human Resources Committee 5-0)

On motion by Supervisor Brandl, second by Supervisor Monroe, Item #1, **Ord. No. 953-11/15**; Item #2, **Ord. No. 954-11/15**; Item #3, **Res. No. 51-11/15**; and, Item #4, **Res. No. 53-11/15** were approved by voice vote.





RECEIVED  
WALWORTH COUNTY CLERK

2015 DEC -1 PM 1:07

100 East Wisconsin Avenue  
Suite 2800  
Milwaukee, Wisconsin 53202

Telephone:  
(414) 276-6666  
Facsimile:  
(414) 273-4047

*CORP. SERVICE  
12-1-15 105 PM  
By Pat Ouel*

November 25, 2015

Walworth County Clerk  
100 W Walworth Street  
Elkhorn, WI 53121

Re: Brenda Thurin  
Date of Accident: 9/1/15

Dear Clerk:

Enclosed for filing in the above-mentioned case are the original and four copies of Notice of Injury. I would ask that you return the conformed copies to me in the enclosed, self-addressed and stamped envelope.

Very truly yours,

GRUBER LAW OFFICES, LLC

Kaiven Yazdani  
Ky@gruber-law.com  
KY:sms



100 East Wisconsin Avenue  
Suite 2800  
Milwaukee, Wisconsin 53202

Telephone:  
(414) 276-6666  
Facsimile:  
(414) 273-4047

**NOTICE OF INJURY**

TO: Walworth County Clerk  
100 W Walworth Street  
Elkhorn, WI 53121

Walworth County Sheriff's Department  
1770 CTH NN  
Elkhorn, WI 53121

Ms. Andrea Corson  
American Family Insurance  
6000 American Parkway  
Madison, WI 53783

RE: Brenda Thurin  
356 South Creek Drive  
Elkhorn, WI 53121

Date of Accident: September 1, 2015  
Location: Highway 120 and N Bloomfield Road, Walworth County

PLEASE TAKE NOTICE, pursuant to § 893.80, Wis. Stats., that on September 1, 2015, Brenda Thurin suffered injuries and damages in a motor vehicle accident that occurred when Brenda Thurin, while in the course and scope of her employment with the Walworth County Sheriff's Department, was operating her Walworth County Sheriff's vehicle and was negligently struck by Richard Chilton, insured through American Family Insurance.

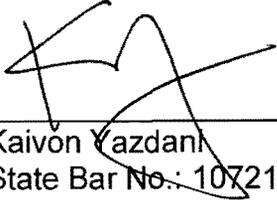
Liability for Brenda Thurin's injuries and damages are attributed to Walworth County and Walworth County Sheriff's Department pursuant to the theory of

*Respondent Superior*, in that Walworth County and Walworth County Sheriff's Department are liable for the acts of their employees, while in the course and scope of her employment.

Dated at Milwaukee, Wisconsin this 25 day of November, 2015

GRUBER LAW OFFICES, L.L.C.  
Attorneys for Brenda Thurin

By: \_\_\_\_\_

  
Kaivon Yazdani  
State Bar No.: 1072132

POST OFFICE ADDRESS:  
100 East Wisconsin Avenue  
Suite 2800  
Milwaukee, Wisconsin 53202  
(414) 276-6666

RECEIVED  
WALWORTH COUNTY CLERK

2015 DEC -1 PM 4:35

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

RECEIVED  
WALWORTH COUNTY CLERK

2015 DEC -8 AM 8:41

Matthew Dennis

Plaintiff

v.

Kurt Picknell, Walworth County and Michael Dittman

Defendant

Civil Action No. 15-cv-275-jd

2015 NOV -6 A 10:43  
U.S. MARSHAL  
MILWAUKEE, WI

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Walworth County  
c/o of County Clerk (Kimberly S. Bushey)  
100 W. Walworth St.  
Elkhorn, WI 53121

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew Dennis , 605820  
Columbia Correctional Institution  
P.O. Box 900  
Portage, WI 53901-0900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

*Jeanne Smedley*  
Signature of Clerk or Deputy Clerk

Date: 11/03/2015

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

DOC NO  
REC'D/FILED  
2015 MAY 11 PM 12:00  
LETTER OFFICER  
CLERK'S LIST COURT  
15 C 275-jdp

Matthew Dennis  
605820, Plaintiff,

Case No.

V.  
Sheriff Kurt Picknell, of Walworth co. Jail  
Walworth County  
Michael Dittman, Warden

COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Nature of proceedings

1. This is a civil action commenced under, § 1983 and other applicable provisions of the laws of the United States of Wisconsin brought to redress the violation of Plaintiff rights guaranteed to him by the constitution of the United States, which proximately caused extreme emotional stress, physical pain, and suffering. The actions of each defendants (who are employees of the Wisconsin State Department of Corrections) displayed deliberate indifference to plaintiffs' constitutionally protected right to be free from conditions of confinement that constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution and to adequate reasonable protection from physical abuse by staff and or inmates.

I. JURISDICTION AND VENUE

2. Jurisdiction over subject matter of this action is conferred by 28 U.S.C.S. §1331 (Federal Question Jurisdiction), 1343(A)(3) (42 U.S.C.S. §1983 Jurisdiction), and 28 U.S.C.S. §1367(a) (Supplemental Jurisdiction for state law claim).

3. Venue is properly laid in the Western District of Wisconsin because the wrongful acts complained of herein took place in Walworth County, within the Western District of Wisconsin also within the meaning of 28 U.S.C.S. §1391 (B).

EXHUASTION OF LEGAL REMEDIES

4. Plaintiff Matthew Dennis filed his Offender complaint(s) (ICE), and followed the Department of Corrections Grievance procedure outlined in DOC 310. Complaint # CCI-2015-2656. Plaintiff has also followed the grievance procedure with the Walworth County jail.

## II. PARTIES

### A. Plaintiff

5. The plaintiff Matthew Dennis, #605820 is an adult male resident of Columbia Correctional Institution, P.O. Box 900 Portage WI, 53901.

### B. Defendant(s)

6. The Defendant, Sheriff Kurt Picknell is an adult citizen of the United States, currently as a resident of Wisconsin and at all times, material hereto, was employed as the Sheriff at Walworth county Jail.

7. The defendant, Walworth County Jail is a County of the United States, and currently a city in the State of Wisconsin and at all times, material hereto.

8. The defendant, Michael Dittman is an adult male citizen of the United States, currently a resident of Wisconsin and at all times, material hereto, was employed as the Warden at Columbia Correctional Institution.

9. At all times material hereto, all named defendants (namely Warden Dittman, Sheriff Kurt Picknell,) were acting under color of state law within the meaning of 42 U.S.C. §1983.

10. At all times material hereto, all named defendants (namely Warden Dittman, Sheriff Kurt Picknell) were acting within the scope of his/her authority within the meaning of §895.46 Wis. Stats.

## III. PREVIOUS LAWSUITS

A. No I have not begun other law suits in federal court relating to the same facts involved in this action.

B. No I have not begun other lawsuits in federal court relating to my imprisonment.

## IV. STATEMENT OF CLAIM AS TO ALL CAUSES OF ACTION AND VIOLATIONS OF LAW

### CRUEL AND UNUSUAL PUNISHMENT

#### Count 1

11. On Monday October 13<sup>th</sup> 2014, while playing a card game inmate Larry Shannen began to strike the plaintiff Matthew Dennis in the back of the head.

12. As plaintiff Dennis stood up to shield the punches to his (plaintiff) head; Larry Shannen put the plaintiff in the head lock, and began to choke plaintiff Dennis.

13. After the plaintiff got out of the headlock he tried to get away from Larry Shannen, at that moment Shannen jumped on plaintiff Dennis and proceeded to batter the plaintiff, striking him in the back of the head and face, at that time Plaintiff Dennis lost consciousness.

14. At this specific time plaintiff Dennis was property of the Wisconsin Department of Corrections and was to be placed separate from Walworth County inmates, in which there is supposed to be a *security classification policy system* of all state inmates housed in any county jail throughout the state of Wisconsin.

15. Walworth county officers recklessly endangered plaintiff Dennis's at a time when a policy was to be set forth requiring separation of county and state inmates. **Leaving Plaintiff Dennis incarcerated under conditions posing a substantial risk of serious harm.**

16. When the abuse occurred, staff members (officers) watched the assault and did not intervene quick enough and allowed inmate Larry Shannen to continuously punch plaintiff Dennis causing bodily harm. A beating suffered by the hands of a fellow detainee... clearly constitutes serious harm, as being violently assaulted in a county or prison is simply not part of the penalty that criminal offenders pay for their offenses against society.

17. Plaintiff Dennis experiences chronic headaches and neck pain that limits his regular activities and continues to have sleep deprivation behind the assault.

18. Pursuant to the grievance procedure within Walworth County jail and D.O.C., the plaintiff filed an administrative appeal with defendants Dittman, and Sheriff Picknell, of Walworth County, pointing out that Dennis's Eighth Amendment rights were violated for Cruel and Unusual punishment, and failure to protect the plaintiff.

19. Defendants Dittman and Sheriff Picknell denied the plaintiff's appeal/grievance.

20. The actions of defendant Dittman and the sheriff in refusing to discipline their officers and furthermore make sure *security classification policies* were followed, constitutes their negligence.

21. Walworth County is liable for having a *Security Classification policy* that **systematically fails** to address obvious risks to an inmate's safety, particularly Plaintiff **Matthew Dennis**. Walworth County may not escape liability for deliberate indifference by showing that, while they were aware of an obvious, substantial risk to inmate safety, they did not know that the complainant was especially likely to be assaulted. Absent a *security classification policy*.

**“SYSTEMS” EIGHTH AMENDMENT CLAIM**

Count 2.

22. Deficiencies in the *Security Classification System*, jeopardizes the health and safety of inmates being housed at Walworth County jail. Systemic errors in the security classification system resulted plaintiff Matthew Dennis being put in a dangerous situation and beaten, at a time when separation is required. Systemic errors in the security classification system also resulted in officers not responding properly if at all to an inmate being attacked. This security classification system at Walworth County jail is unable to reliably provide a secure environment in which it's the officers' duty to do so.

23. The actions of defendant Sheriff Picknell in approving and ratifying a system in which Walworth county jail officers do not have a policy or abide by a policy of **protection** of inmates is a violation of rights guaranteed to Plaintiff Dennis by the *Eighth Amendment* of the United States Constitution once harmed. In this case plaintiff had been harmed by an act of violence.

24. The actions of defendant Dittman in having custody of the plaintiff and responsible for the safety of the plaintiff, and placing the plaintiff in the custody of officers who were negligent in protecting the plaintiff, constitutes an Eighth Amendment violation of the United States Constitution.

25. Paragraphs 11-24 are acts of negligence which disclose a pattern evincing an excessive risk of serious harm that needs correction. Systemic and inadequacies create a high risk of future injury that deliberate indifference can be inferred.

26. It is quite likely, therefore that defendant Sheriff Kurt Picknell created a policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom to continue; and it is a possibility that the action or failure can be attributed to defendant Sheriff Kurt Picknell and that he/she is being sued in his/her individual capacity for action performed in his/her official capacity; in that he/she failed to promulgate procedures whereby separation of state and county inmates would automatically happen during custody at Walworth county jail.

**V. LEGAL THEORY OR APPROPRIATE AUTHORITY**

27. **Farmer v. Brennan**, 511 U.S. 825, 833, 114 S. Ct. 1970, L. Ed. 2d 811 (1994); Prison officials have a duty to protect prisoners from violence at the hands of other prisoners.

28. **Palmer v. Marion County**, 327 F. 3d 588, 593 (7<sup>th</sup> cir. 2003). This protection extends to both convicted prisoners and pretrial detainees.

29. **Wilson v. Seiter**, 501 U.S. 294.

30. **Helling v. McKinney**, 509 U.S. 25.

31. **Morris v. Voss**, 2013 U.S. Dist. Lexis 22841.

32. **Brown v. Budz**, 398 F.3d 904, 910 (7<sup>th</sup> cir. 2005). Plaintiff alleged conditions posing a substantial risk of serious harm.

33. **Christie v. Iopa**, 176 F.3d 1231 (9<sup>th</sup> cir. 1999); **Doe v. County of Lake**, 399 F. Supp. 553; 1975 U.S. Dist. Lexis 16498. County was a “person” which could be sued under 1983.

## VI. DAMAGES

34. As a result of the named defendants’ deliberate indifference in their delayed responses and failure to protect, the plaintiff Matthew Dennis suffered unnecessary pain and suffering and emotional distress for all of which plaintiff seeks a total sum of \$250,000.

## VII. DEMAND FOR JURY TRIAL

Plaintiff Dennis hereby demands a trial by jury of all issues triable of right to jury in this action.

## VIII. PRAYER FOR RELIEF

### A. Issue a declaratory judgment stating that:

1. Walworth Co. Jail officers were responsible for the safety of plaintiff Dennis and violated the Eighth Amendment, when not separating him from county inmates resulting in being physically assaulted.
2. Defendant Dittman was responsible for the safety of Plaintiff Dennis.
3. That both Sheriff and Warden Dittman should have had a Security Classification System in place and by not having or using this system in place constitutes cruel and unusual punishment, once the plaintiff was harmed.

### B. Issue an injunction ordering Defendant Sheriff Kurt Picknell to:

1. Put in place a policy separating Department of Corrections inmates from county inmates for the safety of all inmates.

### C. Award Compensatory Damages in the following amounts:

1. \$125,000 jointly and severally against defendant Sheriff Kurt Picknell, and Walworth county for emotional and physical injury, resulting from being beaten and hit in the back of the head.

2. \$125,000 jointly and severally against defendant Dittman for emotional and physical injury, resulting from being beaten and hit in the back of the head.

**D. Award punitive damages in the following amounts:**

1. \$125,000 each against defendant Sheriff Kurt Picknell and Walworth County.

2. \$125,000 against defendant Dittman.

E. Grant such other relief as it may appear that plaintiff is entitled for an Eighth Amendment violation as court deems just.

F. Wherefore, Plaintiff Matthew Dennis prays that the court grant judgment against the defendants' **awarding him:**

G. Monetary damages in an amount that fairly compensate the plaintiff for pain and suffering.

Dated this 1 day of May, 2015

Respectfully Submitted,

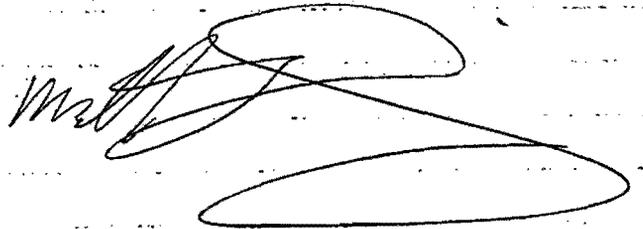
Matthew Dennis #605820

A handwritten signature in black ink, appearing to read 'Matthew Dennis', written over a horizontal line.

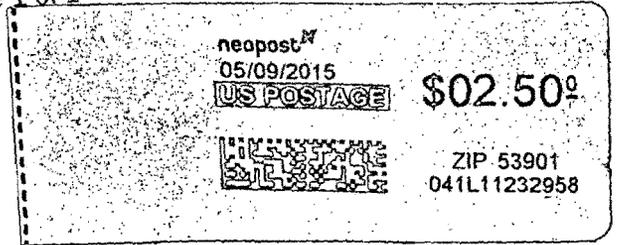
To whom this may concern.

May 5, 2015

My name is Matthew Dennis. This took me a long time, and a lot of help from other people; please note that I am laughing as I'm going. I have feeling this form is not 100% accurate. I am seeking counsel; and need help. Thanks & God Bless.

A handwritten signature in black ink, appearing to read "Matthew Dennis". The signature is stylized with large, sweeping loops and is written over a large, empty oval shape that has been drawn on the page.

Matthew Dennis 605800  
Columbia Correctional Inst  
P.O. Box 900 Portage, WI 53901



The western District of Wisconsin  
120 N. Henry Street, Room 320  
Madison, WI 53703

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

RECEIVED  
MAY 11 2015

PETER  
CLERK

MATTHEW DENNIS,

Plaintiff,

v.

Case No. **15 C 275-jdp**

SHERIFF KURT PICKNELL, et al.,

Defendants.

**DECLARATION OF**

Kashif White declares the following under the penalty of perjury:

1. I am an adult male competent to testify to matters herein.
2. I am a resident of Columbia Correctional Institution, whose address is 2925 Columbia Drive, P.O. Box 900, Portage, WI 53901.
3. I was returned to Walworth County Jail 2 times in (years) on writs.
4. Each time I was returned I was placed in cell blocks with Walworth County Jail ("WCJ") pretrial detainees.
5. I witnessed ongoing conflicts between Wisconsin Department of Correction and WCJ inmates and the WCJ officers were aware of these ongoing conflicts.

I, Kashif White do here by swear under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated this 4/29/2015 day of April, 2015.

Kashif White 4/30/15

Name  
Columbia Correctional Institution  
P.O. Box 900  
Portage, WI 53901-0900

REC'D/FILED  
DOC NO  
MAY 11 PM 12:00  
PETER CLERK  
WESTERN DISTRICT OF WISCONSIN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MATTHEW DENNIS,

Plaintiff,

v.

OPINION & ORDER

15-cv-275-jdp

KURT PICKNELL, WALWORTH COUNTY,  
and MICHAEL DITTMAN,

Defendants.

---

Plaintiff Matthew Dennis, a prisoner in the custody of the Wisconsin Department of Corrections currently housed at the Columbia Correctional Institution, has filed a complaint alleging that officials from the DOC and from Walworth County failed to protect him from harm while he was housed at the Walworth County Jail. He seeks leave to proceed with his case *in forma pauperis*, and he has already made an initial partial payment of the filing fee previously determined by the court.

The next step is for the court to screen the complaint and dismiss any portions that are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In screening any *pro se* litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

After considering plaintiff's allegations, I will allow him to proceed on Eighth Amendment failure to protect and state law negligence claims against defendants.

## ALLEGATIONS OF FACT

Plaintiff Matthew Dennis is a prisoner in the custody of the Wisconsin Department of Corrections at the Columbia Correctional Institution. During the events in question, he was housed at the Walworth County Jail, although he was still a DOC inmate. I understand plaintiff to be saying that DOC inmates were intermingled with Walworth County inmates, which led to tension and conflicts between the two groups, and that jail officials were aware of this. As a DOC inmate, plaintiff was supposed to be housed separately from Walworth County prisoners, but the county chose to keep the prisoners together.

On October 13, 2014, plaintiff was attacked by inmate Larry Shannen, a Walworth County prisoner. Shannen hit plaintiff in the head and choked him, causing plaintiff to lose consciousness. Jail staff did not respond quickly enough to prevent plaintiff from being harmed. Plaintiff now suffers chronic headaches, neck pain, and sleep deprivation.

Plaintiff believes the lack of separation put him in danger. Plaintiff filed grievances in both the jail and DOC system. Defendants CCI Warden Michael Dittman and Walworth County Sheriff Kurt Picknell denied plaintiff's grievances.

## ANALYSIS

I understand plaintiff to be bringing Eighth Amendment and state law negligence claims against defendants for not properly protecting him from inmates at the Walworth County Jail.

### A. Eighth Amendment

The Eighth Amendment requires prison officials "to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (citations

omitted). An “official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Gillis v. Litscher*, 468 F.3d 488, 491 (7th Cir. 2006) (quoting *Farmer*, 511 U.S. at 847). To state a failure to protect claim, a claimant must allege: “(1) that he was incarcerated under conditions posing a substantial risk of serious harm and (2) that [the prison official] acted with deliberate indifference to that risk.” *Santiago v. Wells*, 599 F.3d 749, 758 (7th Cir. 2010).

A jail or prison official may be named as a defendant in his or her individual capacity in a claim under 42 U.S.C. § 1983 when the official personally participated in or had personal knowledge of the types of acts or omissions that form the basis of the claim. See *Antonelli v. Sheahan*, 81 F.3d 1422, 1428 (7th Cir. 1996). A senior official who was not personally involved in the acts or omissions complained of nonetheless may be liable in his individual capacity if he can be expected to have either known of or participated in creating systemic inadequate conditions. *Id.* at 1428-29 (holding that because sheriff and director of jail could have been expected to have personal responsibility for alleged systemic violations, claims regarding those violations could not be dismissed on the ground that deliberate indifference of defendants was not adequately pleaded); *Sanders v. Sheahan*, 198 F.3d 626, 629 (7th Cir. 1999) (holding that “defendants such as the Sheriff and the Director of the Jail can realistically be expected to know about or participate in creating systematic jail conditions”). Here, it is reasonable to assume that defendant Sheriff Picknell was responsible for overseeing the general conditions of confinement at the jail and maintaining the policies that placed plaintiff in danger. Plaintiff also seems to be saying that Picknell was aware of the

tension between DOC and Walworth County inmates that created the danger. Therefore, I will allow plaintiff to proceed on an Eighth Amendment claim against Picknell.

As for defendant Dittman, he oversees a separate DOC prison; it is not clear why plaintiff believes that Dittman should be held responsible for the policies at the Walworth County Jail. He cannot be held liable for failing to protect him from the attack itself because there is no indication that he was aware of the danger facing plaintiff before the attack. But plaintiff also alleges that Dittman denied his grievance *after* the attack, which suggests that Dittman turned a blind eye to the danger facing plaintiff following the attack. At this point I can reasonably assume that Dittman could have forced a transfer or taken other action in response to the danger made clear by the attack, so I will allow plaintiff to proceed on an Eighth Amendment claim against Dittman as well.

Plaintiff also names Walworth County as a defendant, so I understand him to be bringing a *Monell*-type claim against the county. Municipal entities such as Walworth County may be held liable under § 1983 if the municipality has a policy that causes a constitutional violation. *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658, 692 (1978). "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011). Plaintiff seems to be alleging that the decision to house DOC and county prisoners together despite the conflicts between them was a policy choice made by county decisionmakers, including Picknell, so I will allow plaintiff to proceed on a *Monell* claim against the county.

Plaintiff also seems to be saying that officers at the scene of the October 13, 2014 attack did not step in quickly enough to prevent harm to plaintiff. However, he does not

name as defendants any of the officers present at the scene, so he cannot bring Eighth Amendment claims against any of these officers.

#### B. Negligence

I understand plaintiff to be alternatively alleging that defendants Picknell and Dittman were negligent in keeping him in dangerous conditions. His state law negligence claims are “so related” to his federal claims against these defendants that “they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). To prevail on a claim for negligence in Wisconsin, plaintiff must prove that defendants breached their duty of care and he suffered injury as a result. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865. It is reasonable to infer at this stage that these defendants were negligent for the same reasons supporting plaintiff’s Eighth Amendment claims, so I will allow plaintiff to proceed on his negligence claims.

#### ORDER

IT IS ORDERED that:

1. Plaintiff Matthew Dennis is GRANTED leave to proceed on the following claims:
  - a. Eighth Amendment failure to protect claims against defendants Michael Dittman, Kurt Picknell, and Walworth County.
  - b. State law negligence claims against defendants Dittman and Picknell.
2. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to the Attorney General for service on defendant Dittman. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff’s complaint if it accepts service on behalf of defendants.

3. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendants Picknell and Walworth County. Plaintiff should not attempt to serve defendants on his own at this time.
4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendants, he should serve the lawyers directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered November 2, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge