

Department of Workforce Development  
Equal Rights Division  
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Scott Walker, Governor  
Raymond Allen, Secretary

Edward F. Wall  
6672 Highland Drive  
Windsor WI 53598  
Complainant

**NOTICE OF APPEAL RIGHTS  
REVIEW BY COURT**

vs.

Department of Justice  
17 West Main Street  
Madison WI 53703  
Respondent

Re: ERD Case No. CR201601706

A final decision and order in this case is enclosed. Any party whose interests are adversely affected by this administrative decision may seek judicial review of the decision. Such review is authorized by Section 227.52, Wis. Stats.

A petition for review must be filed within thirty (30) days after this decision is mailed to the parties. It shall designate as the Petitioner the party filing the petition, and as the Respondent the Department of Workforce Development, Equal Rights Division. The petition for review shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds upon which a review is sought.

The petition for review must be filed in the office of the clerk of circuit court for the county where the petitioner resides. If the petitioner is a non-resident of the State of Wisconsin, the proceedings shall be in the county where the property affected by the decision is located, or if no property is affected, in the county where the dispute arose. A copy of the petition must be served either personally or by certified mail upon the Department of Workforce Development, Equal Rights Division. The address of the Department of Workforce Development, Equal Rights Division is 819 North 6th Street, Room 723, Milwaukee, Wisconsin 53203 or 201 East Washington Avenue, Room A100, P. O. Box 8928, Madison, Wisconsin 53708. Copies of the petition for review must also be served upon all parties who appeared before the Department in the case being appealed no later than thirty (30) days after commencing the proceedings for review. The copies shall be served personally or by certified mail (or, when service is timely admitted in writing, by first-class mail). The Complainant(s) and Respondent(s) whose names and addresses appear in the caption of this decision are considered parties for purposes of judicial review.

Any person aggrieved by this decision and order may petition the Equal Rights Division for rehearing within twenty (20) days after the decision is mailed to the parties. The petition for rehearing must specify in detail the grounds for the relief sought, as well as supporting authorities, in accordance with Section 227.49, Wis. Stats. Copies of the petition for rehearing shall be served on all parties of record. Please note that the filing of a petition for rehearing does not delay the effective date of this order.

Dated and Mailed: October 13, 2017

cc: Complainant  
Respondent

Enclosure

Susan Crawford, Attorney for Complainant  
Katherine Spitz & Anne Bensky, Attorneys for Respondent



**STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EQUAL RIGHTS DIVISION**

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Edward F. Wall  
6672 Highland Drive  
Windsor, WI 53598

Complainant,

**DECISION AND ORDER ON  
RESPONDENT'S MOTION TO DISMISS  
ERD Case No. CR201601706**

State of Wisconsin  
Department of Justice  
17 W. Main Street  
Madison, WI 53703

Respondent.

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In a complaint filed with the Equal Rights Division ("ERD") of the Department of Workforce Development on June 16, 2016, the Complainant alleged that the Respondent violated the Wisconsin Whistleblower Protection Law for State of Wisconsin Employees, sec. 230.80, Wis. Stats., by retaliating against the Complainant because he disclosed information to the Governor, the Governor's Chief of Staff, and the Attorney General about the Department of Justice violating restoration laws according to Sec. 230.00(1), Wis. Stats., and DOA/OSER policies.

On February 17, 2017, an Investigator for the ERD issued an initial determination finding that there was probable cause to believe that the State of Wisconsin Department of Justice may have violated the Wisconsin Whistleblower Protection Law ("Whistleblower Law") by taking retaliatory action because the Complainant lawfully disclosed, or the Respondent believed the Complainant disclosed, information under sec. 230.81, Wis. Stats.

A prehearing telephone conference was scheduled with the parties' attorneys on April 21, 2017. During that telephone conference, the Respondent's attorneys stated that the Respondent intended to file a Motion to Dismiss. The Administrative Law Judge set a briefing schedule for the parties to file submissions relating to the Motion to Dismiss.

On May 5, 2017, the Respondent filed its Brief in Support of Respondent's Motion to Dismiss. On June 5, 2017, the Complainant filed his Response to the Respondent's Motion to Dismiss. On June 19, 2017, the Respondent filed its Reply Brief in Support of Motion to Dismiss.

This Motion to Dismiss was ready for decision on June 19, 2017.

Arguments

In his complaint filed with the ERD on June 16, 2016, the Complainant alleged the following:

1. On or about February 4, 2016, I reported to my previous supervisors (the Governor and the Governor's Chief of Staff) that the Department of Justice ("DOJ") was violating restoration laws according to Wis. Stat. 230.33(1) and DOA/OSER policies. The violations were an abuse of authority by the Attorney General in attempting to use personnel rules to circumvent well-established laws and policies.
2. The DOJ retaliated against me after it heard my initial concerns. The DOJ imposed excessive and severe restrictions by placing me on administrative leave. I provided the Governor's Chief of Staff with a draft WERC appeal. The Chief of Staff provided the WERC appeal document to the DOJ. After receiving the draft WERC appeal, the DOJ took disciplinary actions and ultimately terminated me without just cause or due process.

In his complaint, the Complainant noted that he suffered severe administrative leave restrictions on February 15, 2016; Career Executive reassignment on March 1, 2016; disciplinary investigation on March 15, 2016; and discharge on May 15, 2016.<sup>1</sup>

In its Brief in Support of Respondent's Motion to Dismiss, the Respondent provided pertinent facts to consider in this case. The Respondent noted that on February 5, 2016, the Complainant was informed by DOJ attorneys (including one of its supervisors, Paul Connell) that he would be placed on administrative leave when restored to his previous position as Administrator for the Department of Criminal Investigation ("DCI"). The Complainant was further informed that he would be transferred to a different career executive position when he transferred from the Department of Corrections ("DOC") to the DOJ to avoid public perception of a conflict of interest with the ongoing investigation of Lincoln Hills/Copper Lake facilities. The Respondent was concerned that if the Complainant was reinstated as the DCI Administrator, he would be investigating the very agency he previously headed, which the public may see as a conflict.

The Respondent further noted that the Complainant believed being placed on administrative leave and transferred to a different career executive position was a violation of Wisconsin law. In that regard, the Respondent wrote that the Complainant emailed the Attorney General, Deputy Attorney General and Supervisor Connell his disapproval of their decisions. Also, the Complainant communicated with the Governor's Chief of Staff about his disapproval of the DOJ's decisions. In March 2016, the Complainant mailed a document to the home of the Governor's Chief of Staff. The Chief of Staff recorded the document in the office and informed the DOJ about the document, including the Complainant's statement to "shred" the document after the Chief of Staff reviewed it. Ultimately, the Complainant was disciplined and terminated by the Respondent.

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<sup>1</sup> In his Affidavit with his Response to the Respondent's Motion to Dismiss, the Complainant alleged that his employment was terminated on April 15, 2016. The Respondent also wrote that the Complainant's employment ended on April 15, 2016.

Considering these facts, the Respondent argued that the Complainant failed to make a written disclosure of any "information" that his supervisors at the DOJ did not already know when the disclosure was made. The Respondent wrote that the "information" consisted of the underlying facts, and not the employee's opinion about those facts. The Respondent provided that for a disclosure to be protected under the Whistleblower Law, the recipient of the disclosure must be unaware of the information at the time the disclosure was made. The Respondent argued that the Complainant "disclosed" information that was already known to the recipients of the disclosure, the DOJ Supervisors and the Attorney General. The Respondent noted that the Complainant learned of the transfer and administrative leave from Supervisors at the DOJ. The Respondent wrote that the Complainant merely "parroted back" to DOJ Supervisors the same information he was told, adding his displeasure with the situation. The Respondent also noted that the Governor's office was aware of the actions the DOJ took against the Complainant when the Complainant made the purported disclosure.

In his Response to Respondent's Motion to Dismiss, the Complainant agreed that a disclosure under the Whistleblower Law required that the recipient not know of the disclosed facts when the disclosure was made. However, the Complainant argued that the Governor and the Chief of Staff were not aware of the facts the Complainant disclosed to them when he initially communicated with them about his employment situation.<sup>2</sup> The Complainant noted that he communicated information to the Governor and Chief of Staff on the phone on February 6, 2016, and in writing on February 12, 2016. In his Response, the Complainant also mentioned that at that time of those communications, he was employed as the Secretary of the Department of Corrections. The Complainant also wrote that as an employee of the Department of Corrections, the Governor and his Chief of Staff were his supervisors. The Complainant conceded that when he mailed his WERC appeal document to the Chief of Staff in March 2016, the Chief of Staff was aware of the facts because the Complainant had previously disclosed the facts to the Chief of Staff. However, the Complainant argued that the WERC appeal document included "an expanded analysis" of the facts.

With his Response to the Respondent's Motion to Dismiss, the Complainant provided an Affidavit. In that Affidavit, the Complainant offered the following facts:

1. On February 5, 2016, he resigned as Secretary of the Department of Corrections and told the DOJ he intended to restore to his previous position as DCI Administrator.
2. On February 5, 2016, Cook, Connell and other DOJ Attorneys talked to the Complainant about returning to DCI. The Complainant was told that he would be placed on leave and reassigned to another position outside of the DCI.
3. On February 5, 2016, the Complainant called the Governor's Chief of Staff and told him the DOJ was not honoring his civil service restoration rights. On that same day, the Complainant texted the Governor the same information.
4. On February 6, 2016, the Complainant spoke to the Governor about the DOJ not honoring his civil service restoration rights.

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<sup>2</sup> For purposes of this Motion to Dismiss, the Administrative Law Judge assumes that the Governor and Chief of Staff were not aware of the Complainant's employment situation at the time the Complainant had his communications with them.

5. On February 10, 2016, the Complainant sent a letter to the Attorney General of his intent to restore to the DCI Administrator position.
6. On February 12, 2016, the Complainant mailed a packet of information to the DOJ and the Attorney General, urging he be restored to the DCI Administrator position. The Complainant also sent the packet to the Governor's Chief of Staff.
7. On February 15, 2016, the Complainant learned that he would be placed on administrative leave.
8. On February 28, 2016, the Complainant was restored to the DCI Administrator position.
9. On March 1, 2016, the Complainant was reassigned to a program and police manager position in the DOJ's Division of Law Enforcement Services.
10. On March 9, 2016, the Complainant sent his WERC appeal document to the Governor's Chief of Staff, with a note to "shred it" after the Chief of Staff reviewed it.
11. On April 15, 2016, the Complainant's employment was terminated.

In its Reply Brief in Support of Motion to Dismiss, the Respondent argued that the Complainant could not meet the requirement in the Whistleblower Law that he disclosed information in writing to his supervisor before disclosing information to another person. The Respondent noted that the Complainant did not make a written disclosure to the Governor's Chief of Staff while he was employed by the DOC. It argued that the Complainant's first written disclosure to the Governor's Chief of Staff was the March 2016 WERC appeal document.<sup>3</sup> This was after the Complainant verbally disclosed the information to the Chief of Staff in February 2016. Also, the Respondent argued that when the Complainant provided a copy of his WERC appeal to the Chief of Staff, the Chief of Staff was no longer the Complainant's supervisor. The Respondent also noted that the Complainant did not disclose a copy of his WERC appeal document to his then-current DOJ Supervisor prior to the Complainant mailing a copy of his WERC appeal document to the Chief of Staff.

The Respondent also restated its previous arguments in its Reply Brief. The Respondent argued that when the Complainant provided his written disclosure to the Governor's Chief of Staff in March 2016, the Chief of Staff was already aware of the facts/disclosure as the Complainant had previously provided him with the information verbally. The Respondent further argued that because the Chief of Staff was aware of the facts, the Complainant was not afforded protections under the Whistleblower Law. Finally, the Respondent argued that the Complainant's disclosures were opinion, and not "information" as defined by the law.

Finally, in its Reply Brief, the Respondent argued that the Complainant was not protected under the Whistleblower Law as he was not an "employee", pursuant to Sec. 230.80(3), Wis. Stats. The Respondent cited to that section of the Whistleblower Law, providing the following:

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<sup>3</sup> Based on the Complainant's Affidavit, the Complainant's first written communication to the Chief of Staff was the February 12, 2016 submission made to the DOJ and Attorney General. That submission was made while the Complainant was employed by the DOC.

(3) "Employee" means any person employed by any governmental unit except:

(a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

(b) A person who is, or whose immediate supervisor is, assigned to an executive salary group under s. 20.923 or a person who has, or whose immediate supervisor has, a position specified in s. 36.115 (3m) (ae) to (f).

The Respondent noted that Sec. 20.923, Wis. Stats., lists the Secretary of the Department of Corrections as belonging to an executive salary group. The Respondent argued that the Complainant would not be protected under the Whistleblower Law if he made disclosures to the Governor and/or Chief of Staff while the Complainant was the Secretary of the Department of Corrections, as that position was assigned to an executive salary group. The Respondent argued that as the Secretary of the Department of Corrections, the Complainant was not an "employee" for purposes of the Whistleblower Law.

#### Discussion

A complaint may be dismissed prior to hearing on a motion to dismiss for failure to state a claim upon which relief may be granted if it appears that even if what is claimed by the Complainant is assumed for purposes of the analysis to be true, a decision in favor of the Respondent would nevertheless be required as a matter of law. *See Ficken v. Harmon Solutions Group* (LIRC 2/07/2003).

In deciding whether a complaint states a claim under the Whistleblower Law, the complaint is the starting point. Additional assertions made by the Complainant may then be looked at to the extent necessary to provide details concerning claims already alleged in the complaint. *See Garner v. UW-Milwaukee* (LIRC 2/10/2006). Because the Whistleblower Law only provides protection to state employees making specific types of disclosures, it may be necessary to look at documents beyond the complaint. It may be necessary to review the written disclosures made by the Complainant to determine if they comply with the Whistleblower Law.

The applicable statutes relating to whistleblower protections for state employees are the following:

(1) An employee with knowledge of information the disclosure of which is not expressly prohibited by state or federal law, rule or regulation may disclose that information to any other person. However, to obtain protection under s. 230.83, before disclosing that information to any person other than his or her attorney, collective bargaining representative or legislator, the employee shall do either of the following:

(a) Disclose the information in writing to the employee's supervisor.

Wis. Stats. §230.81(1)(a)

(3) "Employee" means any person employed by any governmental unit except:

(a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.

(b) A person who is, or whose immediate supervisor is, assigned to an executive salary group under s. 20.923 or a person who has, or whose immediate supervisor has, a position specified in s. 36.115 (3m) (ae) to (f).

Wis. Stats. §230.80(3)

(5) "Information" means information gained by the employee which the employee reasonably believes demonstrates:

(a) A violation of any state or federal law, rule or regulation.

(b) Mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety.

Wis. Stats. §230.80(5)

The Whistleblower Law prohibits any appointing authority, agent of an appointing authority or supervisor from initiating or administering, or threatening to initiate or administer, any retaliatory action against an employee. *See* Wis. Stats. §230.83(1).



As noted by both parties in their briefs, an employee's opinion alone regarding the lawfulness or appropriateness of government activities is not "information" under the Whistleblower Law. *See State of Wisconsin Department of Justice v. State of Wisconsin Department of Workforce Development*, 365 Wis.2d 694, 723 (2015). Rather, for purposes of the Whistleblower Law, the "information" is the details of the underlying conduct, rather than the opinion itself. *See id.*

Also, as noted by both parties in their briefs, for a disclosure to be protected under the Whistleblower Law, the employee must share information with recipients whom are unaware of the facts being shared by the employee. *See id.*

To determine whether the Complainant has raised a claim that should be allowed to proceed to a hearing on the merits of the complaint, it must be determined whether (a) the Complainant was an employee protected under the Whistleblower Law; and (b) the Complainant made protected disclosures of information under the Whistleblower Law. All the communications claimed by the Complainant to be protected communications have been considered. After reviewing the complaint, both parties' briefs relating to the Respondent's Motion to Dismiss, and the Complainant's Affidavit, it has been determined that the Complainant was not an employee protected under the Whistleblower Law at certain times the Complainant claimed he made protected communications. Also, at times that the Complainant was an employee protected under the Whistleblower Law, the Complainant did not make protected disclosures of information under the Whistleblower Law. Therefore, his complaint must be dismissed.

**The Complainant Was Not an "Employee" Protected Under the Whistleblower Law**

As previously noted, the Whistleblower Law defines an "employee" as any person employed by any governmental unit except:

- (a) A person employed by the office of the governor, the courts, the legislature or a service agency under subch. IV of ch. 13.
- (b) A person who is, or whose immediate supervisor is, assigned to an executive salary group under s. 20.923 or a person who has, or whose immediate supervisor has, a position specified in s. 36.115 (3m) (ae) to (f).

Wis. Stats. §230.80(3)

Sec. 20.923(4)(h), Wis. Stats., provides that employment positions assigned to executive salary group 8 include the Secretary of the Department of Administration, the Secretary of the Department of Health Services, and the Secretary of the Department of Corrections.

The Complainant confirmed in his Affidavit and his Response to the Respondent's Motion to Dismiss that he was the Secretary of the Department of Corrections, reporting to the Chief of Staff and Governor, from 2012 until he was reassigned to the DOJ on February 28, 2016.<sup>4</sup> Based on Wisconsin Statute §230.80(3), as the Secretary of the Department of Corrections, any information the Complainant disclosed to a third-party would not afford him protections under the Whistleblower Law.

From February 5, 2016 to February 27, 2016, the Complainant alleged he made the following communications:

1. On February 5, 2016, the Complainant called the Governor's Chief of Staff and told him the DOJ was not honoring his civil service restoration rights. On that same day, the Complainant texted the Governor the same information.
2. On February 6, 2016, the Complainant spoke to the Governor about the DOJ not honoring his civil service restoration rights.
3. On February 10, 2016, the Complainant sent a letter to the Attorney General of his intent to restore to the DCI Administrator position.
4. On February 12, 2016, the Complainant mailed a packet of information to the DOJ and the Attorney General, urging he be restored to the DCI Administrator position. The Complainant also sent the packet to the Governor's Chief of Staff.

Because the Complainant was the Secretary of the Department of Corrections when he made those communications, he was not an "employee" that was afforded protections under the Whistleblower Law. Because the Complainant cannot be considered an employee and afforded protections under the Whistleblower Law during the period February 5, 2016 to February 27, 2016, the Respondent cannot be found to have retaliated against the Complainant in violation of the Whistleblower Law for any actions it took against the Complainant for his communications during that time.

Therefore, the Complainant's communications to the Chief of Staff, Governor and Attorney General in February 2016 were not protected under the Whistleblower Law.

After the Complainant was reassigned to the DOJ on February 28, 2016, he would be considered an "employee" protected under the Whistleblower Law. However, as explained below, the Complainant's communications after February 28, 2016, were not proper disclosures under the Whistleblower Law.

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<sup>4</sup> Although the Complainant resigned as the Secretary for the Department of Corrections on February 5, 2016, neither party noted the effective date for the resignation. However, based on the facts presented by both parties, it seems that the Complainant remained in that position until February 27, 2016.

As an "Employee", the Complainant Failed to Make Proper Disclosures Under the Whistleblower Law

The Whistleblower Law protects an employee from retaliation if the employee discloses certain information to any person, so long as the employee first discloses the information in writing to his supervisor. As previously noted, "information" means information gained by the employee which the employee reasonably believed demonstrated (a) a violation of any state or federal law, rule or regulation; or (b) mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health and safety. See §230.80(5), Wis. Stats. The Complainant alleged in his complaint that he disclosed information about the Attorney General and DOJ abusing their authority.

In his complaint, the Complainant wrote that his disclosure of information included his communications with the Governor and Governor's Chief of Staff in February 2016 and his disclosure of his WERC appeal document to the Governor's Chief of Staff. As previously noted, the Complainant's communications in February 2016 to the Governor and Governor's Chief of Staff were not protected because in February 2016, the Complainant was not an "employee" as defined by the Whistleblower Law. Therefore, the communication that still needs to be considered is the Complainant's WERC appeal document, which he provided to the Governor's Chief of Staff in March 2016.

The Complainant sent a draft WERC appeal document to the Governor's Chief of Staff on March 9, 2016. At that time, the Complainant was no longer employed by the DOC. He had resigned and had been restored to the position of DCI Administrator. However, before beginning that position, the Complainant was reassigned to a program and police manager position. Therefore, as of March 9, 2016, the Complainant would be considered an "employee" for purposes of the Whistleblower Law.

As of March 9, 2016, the Complainant no longer reported to the Governor's Chief of Staff. The Chief of Staff was no longer the Complainant's Supervisor. Therefore, for the Complainant's March 2016 communication to the Chief of Staff to be protected under the Whistleblower Law, the Complainant needed to provide the information to his supervisor at the DOJ before disclosing the information to the Chief of Staff. The Respondent argued that the Complainant's DOJ Supervisors were already aware of the information in the WERC appeal document as they conveyed the information to the Complainant in February 2016. In his Response to Respondent's Motion to Dismiss, the Complainant argued that the WERC appeal document was not a summary of the same facts provided by the DOJ, but "an expanded analysis" of the facts. Interestingly, the Complainant has not provided copies to the ERD of any of the written communications he claims to be protected under the Whistleblower Law.

For purposes of this Motion to Dismiss, the Administrative Law Judge will assume that the Complainant's WERC appeal document included information that was not previously disclosed to the Chief of Staff. Therefore, for the WERC appeal document to be a protected communication under the Whistleblower Law, and for the Complainant to be protected for disclosing that document to a third-party, the Complainant needed to provide a copy of that document to his then-supervisor at the DOJ.

The Complainant does not suggest in either his complaint or Response to the Respondent's Motion to Dismiss that he provided a copy of his WERC appeal document to anyone but the Governor's Chief of Staff. Rather, the Complainant alleged that the DOJ only received a copy of the Complainant's WERC appeal document when the Governor's Chief of Staff provided it to the Governor's Office. The Governor's Office then provided the Complainant's WERC appeal document to the DOJ. Because the Complainant failed to provide this information to his supervisor at the DOJ prior to disclosing the WERC appeal document to the Governor's Chief of Staff, that disclosure to the Chief of Staff was not protected under the Whistleblower Law.

As noted, some of the Complainant's communications were made while he was Secretary for the Department of Corrections. During that time, the Complainant was not an employee afforded protections under the Whistleblower Law. Once the Complainant transferred to the DOJ, he was an "employee" under the Whistleblower Law. However, the communication the Complainant made after February 28, 2016, was not first made to his supervisor at the DOJ prior to his making the communication to a third-party. Therefore, the Complainant's written communication to the Governor's Chief of Staff in March 2016 was not protected under the Whistleblower Law. None of the Complainant's written communications about his belief that the DOJ was violating his civil service restoration rights were protected under the Whistleblower Law. For that reason, his complaint must be dismissed.

**Supreme Court Ruling in *Department of Justice v. Department of Workforce Development***

Both parties addressed the Wisconsin Supreme Court's decision in *Department of Justice v. Department of Workforce Development*<sup>5</sup> in their briefs. Contrary to the Respondent's claim, it is not clear that case decision required a dismissal of this complaint because the Complainant's supervisors were aware of the information he was communicating. As the Complainant noted in his brief, unlike the Complainant in *Department of Justice v. Department of Workforce Development*, this Complainant had communications with third-parties. The Complainant was not merely providing his opinion to his supervisors about information those same supervisors shared with him. Rather, the Complainant shared with the Governor and Chief of Staff facts that the Complainant considered to be a violation of civil service restoration laws by the DOJ. The Governor and Chief of Staff learned of the DOJ's actions from the Complainant. The Complainant also wrote in his brief that the Wisconsin Supreme Court noted in the decision that its decision was based on the specific facts in that case.

Similarly, it is not clear from the decision in *Department of Justice v. Department of Workforce Development* that a complainant making multiple communications to the same recipients of similar facts would be prevented from bringing a claim under the Whistleblower Law. Specifically, it is not clear that following the decision in *Department of Justice v. Department of Workforce Development*, the Complainant would be prevented from making a claim under the Whistleblower Law because the Chief of Staff already knew of the Complainant's situation when the Complainant made his written

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<sup>5</sup> 365 Wis.2d 694 (2015)

disclosure to the Chief of Staff. The Chief of Staff only learned about the situation involving the Complainant because the Complainant provided that information to the Chief of Staff verbally. However, because this complaint is being dismissed on other grounds, the Administrative Law Judge has not decided whether the Complainant's written communication in March 2016 should be protected by the Whistleblower Law because DOJ officials, the Governor and the Chief of Staff were already aware of the Complainant's concerns about possible violations of restoration rights by the DOJ at the time of the written disclosure.<sup>6</sup>

The Administrative Law Judge has concluded that the Complainant failed to state a claim upon which relief could be granted under the Whistleblower Law. Even reading the complaint liberally, the Complainant could not prevail on the claims alleged in his complaint because he was not an "employee" protected under the Whistleblower Law when some of his alleged disclosures were made. Also, when the Complainant was an employee protected by the Whistleblower Law, his disclosures did not meet the definition of protected disclosure under the Whistleblower Law. Therefore, the complaint is dismissed.

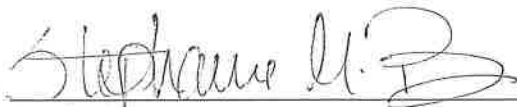
Based upon a review of the file, the submissions of the parties, and the discussion above, the Administrative Law Judge issues the following:

**ORDER**

That the complaint in this matter is hereby dismissed with prejudice.

Dated at Milwaukee, Wisconsin

**OCT 13 2017**



Stephanie M. Brown  
Administrative Law Judge

cc: Complainant  
Respondent  
Susan Crawford, Attorney for the Complainant  
Katherine Spitz and Anne Bensky, Attorneys for Respondent

<sup>6</sup> However, based on a previous decision, this Administrative Law Judge would not have found that the Complainant's verbal communications prevented his written communications from being protected by the Whistleblower Law. In *Morkin v. UW-Madison*, (Wis. Personnel Comm., 11/23/88); aff'd sub nom. *Morkin v. Wis. Personnel Comm.* (Dane Co. Cir. Ct., 09/27/89), the Circuit Court found that the Complainant's verbal communication should not have prevented the Complainant from bringing a claim under the Whistleblower Law for later written disclosures. In that case, the Court concluded that "it would be contrary to the policy behind the protections of the Whistleblower Law for information exchanged in informal discussions to render subsequent formal written disclosures unprotected."

**R E C E I V E D**  
OCT 16 2017  
Pines Bach LLP