



CIVIL PROCEDURE FORM NO. 8-A(2)

IN THE 19th JUDICIAL CIRCUIT, COLE COUNTY, MISSOURI

Form with fields for Judge or Division, Circuit Court Case Number, Plaintiff/Petitioner, Appellate Number, Date of Judgment, Court Reporter, Defendant/Respondent, Date Post Trial Motion Filed, Date Ruled Upon, and checkboxes for Filing as an Indigent and Sound Recording Equipment.

Notice of Appeal to Missouri Court of Appeals - Civil

District: [X] Western [] Eastern [] Southern

Notice is given that Defendant Missouri Department of Corrections appeals from the judgment/decreed/order entered in this action on 10/19/2018 Order denying Defendant's Motion for Judgment Notwithstanding the Verdict, or in the Alternative for New Trial and denying stay of the Declaratory Judgment; 8/17/09 Judgment; 09/14/2018 Order amending the Judgment and the Amended Judgment entered on the same date; 8/10/2018 Order granting Plaintiffs' Partial Summary Judgment; 2/15/2015 Order granting class certification and as amended on 9/29/2015 and 9/5/2017; and 5/4/2018 Order denying Decertification of the class. (date).

Form with fields for Appellant's Name, Address, Appellant's Attorney/Bar Number, Address Missouri Attorney General's Office, E-mail Address, Telephone, Plaintiff/Petitioner, Respondent's Attorney/Bar Number, and E-mail Address.

Brief Description of Case (May be completed on a separate page) This is a class action brought by all Missouri Department of Corrections officers at 21 different prisons for breach of the collective bargaining agreement between Defendant and a subsequently added Plaintiff, the Missouri Correctional Officers Association. Plaintiffs' breach of the collective bargaining agreement claim alleged that because the agreement referenced the overtime provision of the FLSA, the defendant breached the agreement by not paying for certain pre shift and post shift activities. Defendant denied that the activities were compensable and that the individual officers had standing to sue for breach of contract. Plaintiffs also filed a claim for declaratory judgment relating to enforcement of the contract at issue. Defendant denied the claim for Declaratory Judgment was proper. Defendant also asserted throughout the case that class certification was not proper. The court granted Plaintiffs' Summary Judgment on the breach of the agreement and that claim was tried on damages only. The jury entered a verdict for plaintiffs on damages in the amount of \$113,714,632.00. The court also granted plaintiffs declaratory relief.

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)
 Defendants expect the appeal to include the following issues

- 1) The trial court erred in granting the class Plaintiffs and MOCOIA summary judgment on the breach of contract claim.
 - a) There was no meeting of the minds regarding whether the contract required payment for the pre- and post- shift activities since those activities are not mentioned in the contract and both parties knew when the contract was signed the custom and tradition was for nonpayment of such actions.
 - b) The court improperly applied the FLSA requirements in finding the pre- and post- shift activities were compensable because the pre-and post- shift activities were preliminary and post-liminary.
 - c) The court improperly applied the continuous work day doctrine to all class members.
 - d) The court erred in giving plaintiffs instruction 7, plaintiffs verdict director submitting damages only because the summary judgment on the contract was improper.
 - e) The Court erred in finding that any policy or Handbook created a contractual agreement.
- 2) The trial court erred in denying defendant's Motion for Judgment Notwithstanding the Verdict or in the alternative for New Trial.
- 3) The trial court erred in entering declaratory judgment and including in said judgment relief that went beyond a declaration concerning the enforceability and requirements of the Agreement between MOCOIA and the Defendant
- 4) The trial court erred in denying defendants motion to strike plaintiffs' expert William Rogers, PhD., an economist, because Dr. Rogers opinions were based on flawed methodology and flawed evidentiary assumptions that
 - a) All corrections officers had 5 minutes of pre-swipe time at all prisons; and
 - b) All corrections officers work 40 hour weeks during every work week; and
 - c) The time required for pre- and post- shift activities was the same for all posts within in each of the 21 prisons.
- 5) The trial court erred in striking defendant's experts Chester Hanvey and Elizabeth Arnold, who were hour and wage experts that used standard methodologies to investigate the facts and form their opinions.
- 6) The trial court erred in giving plaintiffs' not in MAI instruction #6 because it was not supported by the evidence, was confusing, and improperly advised the jury it could award straight time damages when there was no evidence to support such damages.
- 7) The trial court erred in granting class certification and failing to reconsider and decertify the class because predominance and commonality were lacking.
 - a) The issues applicable to plaintiff's damages claims varied from prison to prison because of the size, age, and type of institution.
 - b) The time it took for pre and post shift activities varied from institution to institution and from officer to officer with each institution, based on the location of the officer's posts within the institution.
 - c) Not all officers did the same pre and post shift activities.
 - d) Not all class members performed the pre- and post- shift activities in the same order and the evidence revealed that not all of the activities alleged to be pre-shift in fact occurred before the shift.
 - e) The court erred in applying the continuous work call to all officers on the same bases without accounting for the factual differences in when and where the officers did the pre and post shift activities.

Date
10/26/18

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on October 26, 2018 (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

Katherine Van Dyck kvandyck@cuneolaw.com

R. Michael Smith mike@cuneolaw.com

/s/ Mary L. Reitz
Appellant or Attorney for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, _____ District.

Docket fee in the amount of \$70.00 was received by this clerk on _____ (date) which will be disbursed as required by statute.

No docket fee was received because:

a docket fee is not required by law under _____ (cite specific statute or other authority).

a motion to prosecute the appeal in forma pauperis was received on _____ (date) and was granted on _____ (date).

Date

Clerk