

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2002-422**

**DECEMBER TERM, 2002**

	}	APPEALED FROM:
	}	
Kirk Wool	}	Original Jurisdiction
	}	
v.	}	
	}	DOCKET NO. 512-8-00 Wncv
John Gorczyk, Commissioner of	}	
the Department of Corrections	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

On August 31, 2000, petitioner Kirk Wool filed a complaint in the Washington Superior Court against the Commissioner of the Vermont Department of Corrections and one of its employees. He also requested to proceed in forma pauperis and moved for an order to perfect service upon the defendants. Although the court granted petitioner's in forma pauperis request, it did not rule on the motion to perfect service. Petitioner wrote to the superior court on two occasions asking that it take action on his motion. In addition, the docket entries reflect that Judge Katz, who took the motion to perfect service under advisement, sent a memorandum on November 21, 2000 to defendants' attorney, Marie Salem, Esq., without noting that the memorandum was also sent to petitioner. Consequently, on September 16, 2002, petitioner filed the present petition for extraordinary relief in this Court seeking an order directing the court to rule on his motion to perfect service and to provide him with a copy of the so-called "Katz memo." Since that time, the Department of Corrections (DOC), through different counsel, moved to dismiss the petition here, and claims that petitioner did receive a copy of the Katz memo. Petitioner opposes the motion to dismiss, insists he was never provided with a copy of the Katz memo, and asks us to sanction DOC's counsel by forwarding a complaint to the Professional Responsibility Board for counsel's allegedly false representation that the court sent the Katz memo to petitioner.

It appears that petitioner's request for an order compelling the superior court to rule on his motion to perfect service has become moot. On October 22, 2002, the superior court, through Judge Teachout, ordered petitioner to serve the defendants in his civil complaint pursuant to V.R.C.P. 4(1), and extended the deadline to do so until December 20, 2002.

Regarding petitioner's request for a copy of the Katz memo, petitioner has an adequate remedy before the superior court. See V.R.A.P. 21 (petitioner must show no adequate remedy in superior court for extraordinary relief in Supreme Court). We agree with petitioner that he is entitled to see whatever documents the court produces that the court shares with other parties to the action below. Petitioner may obtain a copy of the Katz memo by either requesting the same from the superior court's files, or through discovery on DOC in accordance with V.R.C.P. 26 in the underlying action.

Finally, petitioner's complaint that DOC's counsel should be sanctioned by the Professional Responsibility Board must be addressed to the Board in the first instance. See Administrative Order 9, Rules 5, 10.

For the foregoing reasons, the petition for extraordinary relief under V.R.A.P. 21 is dismissed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice