

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 16, 2009**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2008AP2244**

**Cir. Ct. No. 2007CV10567**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**THERESA M. GARNER,**

**PLAINTIFF-APPELLANT,**

**v.**

**BOARD OF REGENTS FOR THE UW SYSTEM,  
JOHN BETTON AND JOELY URDAN,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Theresa M. Garner, *pro se*, appeals from an order dismissing her second amended complaint. The trial court dismissed Garner's

complaint because she did not comply with WIS. STAT. § 893.82 (2007-08),<sup>1</sup> the notice of claim statute. We affirm.<sup>2</sup>

### **GARNER'S SECOND AMENDED COMPLAINT**

¶2 In her second amended complaint, Garner named as defendants the Board of Regents for the University of Wisconsin system, John Betton and Joely Urdan. Garner alleged that Betton “engaged in fraudulent concealment and misrepresentation and concealment of a discrimination complaint” that Garner made “against the University of Wisconsin-LaCrosse from May 1987 to [the] present.” Garner alleged that Betton “denied through fraud, misrepresentation, defamation, [and] retaliation ... any knowledge” of Garner’s discrimination complaint. Garner also alleged that Betton “negligent[ly] allow[ed] [Garner] to receive [an] F in her final graduation semester ... [and] was responsible for [Garner] having to repeat courses, graduate 4 years later and loan that defaulted because of his negligent behavior.”

¶3 As to Urdan, Garner alleged that Urdan “conspired and tried to conceal knowledge of a complaint ongoing with University of Wisconsin-LaCrosse [and] when asked by the Equal Employment Opportunity Commission[,] she denied knowledge.” Garner alleged that she learned of Urdan’s denial “when after 2 ½ years she received an internal document from UWM [the University of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>2</sup> Garner is self-represented, and many of her court submissions, both in the trial court and on appeal, are difficult to understand. Regardless of any uncertainty arising from Garner’s disjointed allegations and argument, it is clear that she failed to comply with the statutory prerequisites to filing suit against the defendants employed by the State of Wisconsin.

Wisconsin-Milwaukee] establishing the connection and conspiracy between UWL and UWM.” Garner alleged that Urdan “limit[ed] [Garner’s] access ... to the UWM campus” and “wrongfully threaten[ed] [Garner] with 2 restraining orders and 1 criminal [u]nlawful [p]hone [c]onduct legal action.” Garner also alleged that Urdan “was instrumental in coercing others to file criminal charges [against Garner]”; “advised [another UWM employee] to falsify an appointment claimed missed with the Diversity Equity Department UWM”; and “defamed [Garner’s] name when she acted unlawful encouraging others to file legal actions.” Garner alleged that Urdan “conspired to bring about criminal charges [against Garner] that were not true.”

¶4 As to the Board of Regents, Garner alleged that it “negligently failed [to] respond, correct these action[s] on both UWM and UWL campuses.”

¶5 Garner alleges that the “defendants knew that their misrepresentation was untrue and spoke and wrote with reckless disregard of its falsity” and “made the representation with the intent to deceive [Garner] and for the purpose of inducing [Garner] to act on it to [her] damage.” Garner also alleged that the defendants “wrote, spoke and publicized the misrepresentation to the entire University System Campus and most dignitaries throughout the University system ... creat[ing] hostility, shunning, ridicule and damage[e to Garner’s] credibility in her employment.”

¶6 Garner sought several types of relief, including a “full scholarship tuition, meal plan and boarding” for Garner which would be “transferable to her daughter”; the restoration of a 3.0 grade point average; the restoration of Garner’s “good credit”; and compensatory and punitive damages totaling \$80,000,000.

## DISCUSSION

¶7 Prior to filing suit against a state employee, a claimant must serve a written notice of the claim upon the attorney general’s office within 120 days of the incident from which the claim arises. *See* WIS. STAT. § 893.82(3). A claimant must adhere to each and every requirement in the statute. *Kellner v. Christian*, 197 Wis. 2d 183, 195, 539 N.W.2d 685 (1995). “The requirements of the statute are not general guidelines; they are rules that must be adhered to with exact care.” *Newkirk v. DOT*, 228 Wis. 2d 830, 833, 598 N.W.2d 610 (Ct. App. 1999). Failure to comply with the requirements of § 893.82(3) is fatal to any claim because its requirements are jurisdictional. *Riccitelli v. Broekhuizen*, 227 Wis. 2d 100, 116, 595 N.W.2d 392 (1999). Timely and proper compliance with § 893.82 must be alleged in the complaint, and failure to do so is grounds for dismissal. *See Yotvat v. Roth*, 95 Wis. 2d 357, 360, 290 N.W.2d 524 (Ct. App. 1980) (analyzing predecessor statute).

¶8 Garner did not allege that she filed a timely and proper notice of claim. That failure is fatal to her attempted action.<sup>3</sup> Accordingly, the circuit court properly dismissed Garner’s second amended complaint.

*By the Court.*—Order affirmed.

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<sup>3</sup> In its brief, the State acknowledges that Garner served four notices of claim on the Attorney General—dated January 15, 2003; June 23, 2003; November 14, 2005; and February 17, 2007. We agree with the State that the notices do not satisfy the requirements of WIS. STAT. § 893.82(3) (A notice of claim must state “the time, date, location and the circumstances of the event giving rise to the claim for injury, damage or death and the names of the persons involved, including the name of the state officer, employee or agent involved.”).

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5.

