

CHRISTOPHER C. HENIGE,

Petitioner,

v.

Case No. 2018CV0167

Administrative Agency

Review: 30607

BOARD OF REGENTS  
OF THE UNIVERSITY OF  
WISCONSIN SYSTEM,

Respondent.

---

**BRIEF IN REPLY TO RESPONDENT’S MOTION TO DISMISS**

---

**NATURE OF PROCEEDING**

This is a proceeding under Wis. Stat. §§ 227.52 -227.57 for judicial review of a decision and order of the Board of Regents of the University of Wisconsin System (“the Board”). The Board dismissed petitioner Christopher Henige from his position as an associate professor. The Board has moved to dismiss this review proceeding on the ground that the court lacks competency to proceed because Henige failed to timely serve his petition for judicial review upon the Board, either personally or by certified mail, as required by Wis. Stat. § 227.53(1)(a)1.

**ISSUE PRESENTED BY THE RESPONDENT**

Respondent in their Brief in Support of Motion to Dismiss presented the following

“Issue”:

“Wis. Stat. § 227.53(1)(a)1 and 2 require that a petition for judicial review be served upon the agency, either personally or by certified mail, within 30 days after service of the agency’s decision upon the parties. Absent strict compliance with the statutory requirements, the reviewing court is deprived of competency to proceed and must dismiss the proceeding. See *Currier v. Wis. Dep’t of Revenue*, 2006 WI App 12, ¶ 23, 288 Wis. 2d 693, 709 N.W.2d 529. In this case, Henige served his petition upon the Board by priority mail, but not personally or by certified mail. Is this court deprived of competency to proceed because Henige failed to timely serve his petition upon the Board either personally or by certified mail?”

#### **PETITIONER’S RESPONSE TO RESPONDENT’S MOTION TO DISMISS**

Respondents first cited *Currier v. Wisconsin Department of Revenue* (2006 WI App 12, ¶23), paraphrasing that decision by stating “statutory requirements must be unbending if they are to me[sic] meaningful.” *Currier* in fact states “if statutory time limits to obtain appellate jurisdiction are to be meaningful they must be unbending”, referring only to that particular circumstance, the circumstance of timeliness, and the fact that service was not performed in *Currier*’s case until after the deadlines for doing so had passed. That is not the question in the instant case. The question is not the timeliness of the service, but the manner of the service, and whether that manner provided the requisite proof of service.

Respondents also cited *Weisensel v. Wisconsin Department of Health and Social Services* (179 Wis. 2d 637, 644, 508 N.W.2d 33 (Ct. App. 1983)). In that case service was also untimely and Respondents’ citation again relates specifically to that issue. It was also the case in

*Weisensel* that the Weisensels did not serve an appropriate representative of DHSS. Again, this is not at issue in the instant case.

Respondents in their Motion to Dismiss have stipulated that Henige “served his petition upon the Board”, that the Board received service in a timely manner, and admit the Board was not prejudiced by Henige’s use of priority mail.

Respondents then argued that service can only be achieved “personally or by *certified* mail”, that “service by regular mail does not satisfy the requirement of certified mail”. But then they argued that service by “registered mail sometimes may be used as a substitute for certified mail.” According to this argument, because registered mail can be a substitute, and because it is not specifically mentioned in the statute, the statute is not in fact as “unbending” as Respondents claim. Respondents argued that registered mail is acceptable because it “provides even greater proof of service than certified mail.” Such an argument indicates that as long as equal or greater proof of service is obtained through the mailing process, the statutory requirements will be met.

Henige agrees that “regular mail” does not provide equal or greater proof of service as “certified mail”. Henige also agrees that “priority mail”, standing alone, does not provide equal or greater proof of service as “certified mail”, and it may well be the case that, as Respondents argue, “priority mail has never been recognized as a permissible substitute for certified mail”, standing alone. Henige also agrees with Respondents’ citation of *Ali* indicating that “priority mail express” is also not a substitute for “certified mail”, standing alone.

However, Respondents have erred in asserting that “Henige served his petition upon the Board by priority mail”. In fact, Henige served his petition using priority mail with “signature confirmation” and not “priority mail” standing alone. Respondents failed to note that the Priority

Mail envelope by which Henige provided service on the Regents also included a “USPS Signature Tracking Number” label. (See Respondents’ own Exhibit 3-001 and included here attached as Exhibit CH-3) This service was added by Henige upon the instruction of the USPS clerk in order to provide identical tracking services as “certified mail”, which are intended to provide proof of delivery and recipient, while in this case also allowing for more rapid delivery, which is not available through the service the USPS calls “certified mail”. (Exhibit CH-1 attached)

According to the United States Postal Service (USPS) website (<https://www.usps.com/ship/insurance-extra-services.htm> accessed 4/5/18), “certified mail” allows the sender to “see when it was delivered or that a delivery attempt was made, and get the signature of the person who accepts the mailing when combined with Return Receipt”. “Return Receipt” is not required by the statute, and therefore the only service “certified mail” provides above standard mail is the ability to track if and when something has been delivered.

According to the same USPS website, “signature confirmation” allows the sender to “find out information about the time and date an item was delivered, or when a delivery attempt was made. Add security by requiring a signature. A delivery record is kept by USPS and made available electronically or by email, upon request.”

Clearly, there is no fundamental or functional difference between “certified mail” and “Priority Mail with Signature Confirmation” relative to providing proof of service, except that according to the USPS clerk who served Henige, “certified mail” is typically applied to conventional mail while “Signature Confirmation” can be added to any USPS service, including Priority Mail, which has the added benefit of more rapid delivery. Both services use an identical tracking system.

Henige sent the documents via Priority Mail with Signature Confirmation, as indicated in the attached Exhibits CH-1 and CH-2. “Signature Confirmation” provides identical proof of delivery as “certified mail” through a USPS tracking service that did not exist when Wis. Stat. 227.53(1)(a)1 was drafted. It is understood that the statutes cannot easily be updated as quickly as technologies change, and it is up to the courts to determine how technological changes may be applied to existing statutes.

Henige asserts that if “registered mail” may be a “substitute for certified mail” because “even greater proof of service” is provided, then “priority mail with signature confirmation” is also an acceptable substitute, because it provides identical proof of service as “certified mail”. The issue before the court is whether adequate proof of service was demonstrated by the manner in which Henige conveyed his petition to the Board of Regents. The question is not whether the letters “c-e-r-t-i-f-i-e-d” appear on an envelope, but whether the process used to deliver that envelope provides the court with adequate proof of service.

In this case, proof of service exists in two forms. First, Respondents have stipulated that Henige’s petition was served upon the appropriate body and that they received it within the time limits provided in the statutes. Additional proof of service is only an issue if one party claims they did not receive service, or that they received service after the statutory deadline, which was the case in each of Respondents’ precedent cases. Neither is the case here.

Second, “signature confirmation” provides identical proof of service as “certified mail”, using the identical tracking system. At the time the statute was drafted, “certified mail” was the only USPS service available that provided the minimum level of proof of service that the drafters deemed necessary to settle disputes regarding service to the satisfaction of the courts. That is no

longer the case, and other mail services, including “priority mail” may offer the identical level of proof of service as long as they are accompanied by “signature confirmation”.

The statutory requirement of certification found in the statute is intended to certify proof of service – that documents were received, and when they were received. Both “Signature confirmation” and “certified mail” provide identical certification.

### **CONCLUSION**

Henige’s Exhibits CH-1, CH-2 and CH-3 demonstrate that Henige employed priority mail with signature confirmation, and Exhibit CH-2 demonstrates proof of service. Henige therefore argues that there is no practical difference between “certified mail” and “Priority Mail with Signature Confirmation” relative to the statutes, and certainly no difference whatsoever in the certification of “proof of service” that either process provides to the court.

In contrast to all of Respondents’ cited precedents, Henige’s service was both timely and performed upon the appropriate body, and Henige’s manner of service provided identical certification of proof of service. As such, Respondent’s motion to dismiss, based fundamentally on failure to provide adequate certification of proof of service, is without merit.

Henige therefore respectfully submits that the Court does indeed have competency to proceed and respectfully requests that the court deny Respondent’s motion to dismiss.

Dated at Fredonia, New York, this 21st day of April, 2018.

Electronically signed by:  
Christopher C. Henige

CHRISTOPHER C. HENIGE  
*Pro se*

Christopher C. Henige  
8651 Hahn Road  
Fredonia, NY 14063  
(716) 680-8090  
cchenige@gmail.com