

4004



Please print in ink or type

MAR 17 2014

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

Deverick Scott, #131042, Claimant

State of Arkansas, Respondent Dept. of Correction

Do Not Write In These Spaces Claim No. 14-0710-CC Date Filed March 17, 2014 Amount of Claim \$ 5000.00 Fund DOC

COMPLAINT Claims 1,2,3-Failure to Follow Procedure

Deverick Scott, #131042, the above named Claimant, of POB 600, Grady, AR 71644 represented by PRO SE

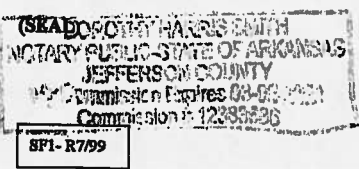
State agency involved: A.D.C. Amount sought: \$5,000

Explanation: ON THE EVENING OF NOVEMBER 4, 2011 VARNER UNIT SUPERVISOR... CLAIM 1 \$1250.00

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? N/A

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true. DEVERICK SCOTT (Print Claimant/Representative Name) X (Signature of Claimant/Representative)

SWORN TO and subscribed before me at



on this 5th day of March, 2014 My Commission Expires: 3 (Month) 9 (Day) 21 (Year)

Claim 2

On 11/7/12 at 11:01 am claimant scott went to disciplinary court held by disciplinary hearing officer Keith Waddle, claimant pointed out in disciplinary hearing he is in a cell where the window come to his chest aint no way a person can see throu a metal door. The charging officer swopes don't state no where in disciplinary where she at. If she on third tier, no way she can see on button floor to 1st tier.

Disciplinary hearing officer responded and stated on tape of hearing: "She didn't state she didn't either." And found me guilty on a assumption of guilt and being a bias officer. The conduct of disciplinary hearing officer name Keith Waddle violates: AD #11-59 Inmate Disciplinary Manual: section 2.4. there is no bias in favor of the charging officer. section 2.6. there is no presumption of guilt. Claimant ask relief sought for isolation punitive he spent, \$1250.⁰⁰

Claimant 3

On 11/4/12 Sgt. spencer violated AD# 00-10 section 13.C. retaliation against employees or inmates who have filed lawsuits or grievances see exhibits: 33-36

Claimant then wrote a grievance on 11/23/12 about Sgt. Spencer writing a disciplinary in retaliation of inmate filing a grievance and it was rejected and not investigated stating it's a disciplinary matter. The conduct of having claimant grievance rejected and not investigated violated AD# 12-16 Inmate grievance policy pg. 3 of 29 note: claims of retaliation, even if related to an reference above, are grievable. see exhibits: #46, 103

The claimant went to disciplinary court and was found not guilty for 10:3 indecent exposure charge. Which that's the charge that would of made claimant guilty of other charges and whole disciplinary should of been thrown out. but do to Disciplinary judge Keith Waddle stating he don't throw no disciplinary act's he find claimant guilty with no evidence. This violated: AD# 11-51 section 2. A there is no bias in favor of charging officer b. there is no presumption of guilt. and refuse to check camera as witness to prove his cell was dark Sgt. Spencer couldn't even see in his cell. which also violate AD# 11-51.

Claimant ask relief sought \$2,500.00

I further swear that the statements matters and things contained herein are true and accurate to the best of my knowledge, information and belief

3/2/14

Derech Levt #131082
affiant

Subscribed and sworn to before me, Notary Public, on this 5th day of March, 2014.

Dorothy Smith
Notary Public

my commission expires:
3-9-14

DOROTHY HARRIS SMITH
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 03-09-2014
Commission # 1238366

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DEVERICK SCOTT (ADC 131042)

CLAIMANT

V.

NO. 14-0710-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ANSWER

COMES NOW the Respondent, Arkansas Department of Correction, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.
2. The applicable account information required by the Commission is:
 - a. Agency number: 0480
 - b. Cost Center: HCA0100
 - c. Internal Order: 340301
 - d. Fund Center: 509

WHEREFORE, for the reasons cited above the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing, or in the alternative that the matter be held in abeyance until completion of the investigation by internal affairs.

Respectfully submitted,
Department of Correction Office of Counsel

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

Arkansas
State Claims Commission
MAR 25 2014

RECEIVED

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 24 day of March, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Deverick Scott (ADC 131042)
Varner Super Max
PO Box 400
Grady, AR 71644-0400

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

Arkansas
State Claims Commission
APR 28 2014

RECEIVED
CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DEVERICK SCOTT (ADC #131042)

V.

NO. 14-0710-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its Motion to Dismiss, states as follows:

- 1. Claimant seeks \$5,000.00 total for three (3) claims.

CLAIM #1

- 2. Claimant seeks \$1,250.00 for violations of various policies and a 005 or incident report, but states no facts to support these conclusions based on an incident on November 4, 2012.
- 3. Arkansas is a fact pleading jurisdiction. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #2

- 4. Claimant seeks \$1,250.00 for failure to follow policy for wrongful time his spent in punitive isolation after being found guilty of indecent exposure on November 7, 2012.
- 5. Claimant states the officer couldn't see him masturbating through the metal door nor did the officer state where she was. The testimony would show, as it did at the disciplinary hearing, that the officer, after seeing his actions, asked him why he was being disrespectful, and he stated to the Officer Pace, "that wasn't disrespectful I'll show you disrespectful. Inmate D. Scott #131042 then came closer to the door and continued to masturbate stroking his penis in a back and forward motion as he stared at me. " The officer clearly had a n opportunity to observe Claimant's actions which violated ADC policy.
- 6. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).


CLAIM #3

- 7. Claimant seeks \$2,500.00 for retaliation by Sgt. Spencer for writing him a disciplinary for indecent exposure on November 14, 2012 of which he was found not guilty.
- 8. Claimant failed to inform the commission that he was found guilty of failure to obey an order of staff and a violation of any felony or misdemeanor for exposing his penis to a staff member. He merely responded that he was just standing at the door looking.

9. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

WHEREFORE, for the reasons stated above and the evidence presented, Respondent prays that these claims be dismissed.

Respectfully submitted,
Department of Correction
Office of Counsel


LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the above MOTION TO DISMISS has been served this 25 day of April, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

DEVERICK SCOTT (ADC #131042)
Varner Supermax
P. O. Box 600
Grady, AR 71644-0600


LISA MILLS WILKINS Ark. Bar #87190

Before the Arkansas State Claims Commission
10/6

Devenick Scott (ADC # 131042)

claimant
Arkansas Claims Commission

No. 14-0710-CC

MAY 19 2014

RECEIVED

Arkansas Department of Correction Respondent

Claimant response to respondents motion to dismiss
Comes now the claimant Devenick Scott # 131042, pro se, responds as follows to the respondents motion to dismiss filed by respondents attorney Mrs. Lisa Mills on April 25th 2014.

Claim #1

1. The claimant states that the respondents attorney Mrs. Lisa Mills willkins motion to dismiss should be barred by laches per to Ad.C.P rule 12(A) and rule 12(B) due to the claimant is challenging the procedures of Ad-11-51 inmate disciplinary manual of respondents. see exhibit: 1 attach and exhibits of claim 1 of claimant original complaint of disciplinary charged by officer Lagusta sarapes. (exhibit: 1) shows the disciplinary officer:
A. there is no bias in favor of the charging officer. B. there is no presumption of guilt. (exhibit: 3 attach) 1: states at a minimum the details should include who, what, when, where, how and why the charge is brought. (exhibit: 2 attach) V.II. B. 3. states the disciplinary hearing officer shall hear all of the facts of the case and shall have singular authority for deciding guilt or innocent. (see exhibits of claim 1 of original) (7)

complaint) and you'll see charging officer Laguisia swipes only mention she was in cell block 1 not where she was at. And plaintiff pointed out in disciplinary court (see review disciplinary hearing tape: will be available in interrogatories) that he was in cell 5 on bottom tier if charging officer was on 3rd tier there was no way she can see on floor under bottom tier in my cell. That's why policy state officer must state where she was at. Keith Waddle disciplinary officer responded "she didn't state she wasn't either" on hearing tape. This shows he found claimant guilty on presumption of guilt and being bias. Violating AR # 11-51 Inmate disciplinary manual claimant serve 30 days isolation punitive for Arkansas rules and regulations being violated. Claimant requested camera be review for witness and was denied without giving reason for denial. King vs Higgins 702 F.2d 18 deprivation of rights at disciplinary hearing. Moran vs. Farmer 924 F.2d 134 prison officials violated inmates rights at disciplinary hearing by failing to call witness requested by inmate and basing disciplinary decision on incomplete record. Regional health care facilities inc v. Rosecare inc 912 S.W. 201 409 (1995) Wright v. Arkansas state plant board, 842 S.W. 2.1. 42 (1992) and see Stewart v. Arkansas state police commission 945- S.W. 20377 (1997) citing Service v. Dulles, 354 U.S. 363 (1957)

Therefore claimant stated claim for Arkansas rules and regulation violations causing claimant to suffer 30 days (8

isolation punitive.

Claim #2

② Claimant states that the respondent attorney Mrs. Lisa Mills Wilkins motion to dismiss on claim #2 be dismiss cause respondent attorney states a dismissal of a incident that is not even the original claim #2. (see exhibit: original claim #2 for claim # 14-0710-0). Therefore original claim #2 of original claim should proceed for Arkansas rules and regulations violation. plaintiff suffered 30 days isolation punitive

Claim #3

③ The claimant states that the respondents motion to dismiss should be barred by laches per to Ark.C.P. rule 12(A) and rule 12(B) due to claimant is challenging the procedures of AD#11-51 inmate disciplinary hearing, AD-14-16 Inmate grievance procedure, AD-225 Employee conduct standards of respondents Tundra spencer charging officer and Keith waddle disciplinary hearing officer. The week before November 14, 2012 claimant wrote Tundra spencer up for not doing her job giving everybody in cellblock #1 ~~the~~ cell clean up the following week she come in cellblock #1 see claimant cell is pitch black she can't see in his cell (review camera footage will be available as interrogated) in retaliation she write claimant a disciplinary stating he masturbated on her. (9

A violation of 10-3 indecent exposure, 12-1 failure to obey an order by staff, 17-1 violation of any felony or misdemeanor. Respondent's attorney state claimant failed to inform commission that he was found guilty of failure to obey an order by staff. Claimant didn't forget. (see exhibit: claim #3 exhibits of disciplinary disciplinary hearing sheets and grievances) you'll see plaintiff was found not guilty of 10-3 indecent exposure charge. If claimant was found not guilty of 10-3 indecent exposure then he didn't violate 12-1 failure to obey an order by staff, 17-1 violation of misdemeanor. The charging officer Keith Waddle found claimant guilty cause he said he don't throw out disciplinary. He refuse to check camer's requested (see exhibit: claim #3 exhibits of original claim's grievance's) Moran v. Farmer 924 F.2d 134 prison officials violated inmates rights at disciplinary hearing by failing to call witness requested by inmate and basing disciplinary decision on incomplete record. Brooks v. Coughlin, 182 A.D. 2d 1115, 583 N.Y.S. 2d 91 (N.Y. app. Div. 1991) holding hearing officer refusal to look at videotape of incident denied right at disciplinary hearing. Therefore violating AP# 11-51 Inmate disciplinary manual (see exhibits: 1 attach, 2, 3 attach. and 4.

④ The conduct of Tundra spence to write claimant a retaliator disciplinary for him writing her up on a prisoner's grievance violated AP# 14-16 Inmate Grievance (10

Procedure (see exhibit 6 attach¹² G.6) see exhibits of claim #3 original exhibits of grievances claimant filed to be investigated and was denied stating disciplinary matters are unreviewable but section 6, note: claims of retaliation even if related to an issue reference above, are reviewable. (see exhibit 6) Maurer v. Paterson, 197 F.R.D. 244 upholding jury verdict for plaintiff who was subjected to retaliation disciplinary charge for complaining about a operation of grievance program. Hines v. Gomez, 108 F.3d 265 (9th Cir. 1997) affirming jury verdict for plaintiff subjected to plaintiff for filing grievances) Boston v. Conklin, 81 F. Supp. 2d 381 (N.D.N.Y. 1999) awarding damages for trumped-up ~~charges~~ disciplinary charges made in retaliation for complaining about state law violations. Cause Tundra Spener couldn't see in claimant cell cause it was pitch black, she don't state where she was at to see claimant, proves the retaliatory motive to falsify OOS report and disciplinary on claimant violation of Ar #225 Employee conduct standards. section 18.B fabrication of any verbal or written statements. and employees is not to retaliate on inmates in no type of way for filing grievances or lawsuit.

⑤ The claimant states that the purposes of a motion to dismiss all material facts alleged in original complaint for claims #1, 2, 3 are presumed to be true and all reasonable inferences should be construed in the light most favorable to the claimant. see Conley v. Gibson, 335 U.S. 41-46 (1957), ~~Mass~~ Mass v. Merrell Assoc, 682 S.W. 2d 769 (1985) Carnett v. Pratter //

6066

737 S.W. 21 159 (1987), Deitsch v. Hillery, 833 S.W. 20
760 (1992) and see Neal v. Wilson, 873 S.W. 20552 (1994) or Hines
service in Dulls, 354 U.S. 363 (1957)

Wherefore the claimant prays that this Arkansas
state claims commission deny the respondents motion
to dismiss and set his claims 1, 2, 3 for a hearing.

Certificate of Service

I Deverick Scott # 132042 prose certify that (5) copies of
the foregoing motion has been mailed to Mr. Norman L. Hodges
Jr. Director of the Arkansas state claims commission and
one copy of the same motion has been mailed to the
respondent's attorney Mrs. Liss Mills Wilkins at P.O. box 8707
Pine Bluff, Ar 71601 on this _____ day of May
2014

prose
respectfully submitted
Deverick Scott # 132042

VSM

P.O. box 600
Grady, Ar 71644

Exhibit: ①



PO Box 8707
Pine Bluff, AR 71611-8707
Phone: 870-267-6200
Fax: 870-267-6244
www.adc.arkansas.gov

ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Disciplinary Manual

NUMBER: 11-51

SUPERSEDES: 11-32

APPLICABILITY: Inmates and Staff

REFERENCE: AR 831 - Disciplinary Rules and Regulations

PAGE 1 of 43

APPROVED: Original signed by Ray Hobbs, Director

EFFECTIVE DATE: 9/26/2011

I. POLICY:

To ensure that institutional rules and regulations are enforced through an unbiased and prudent fact finder and provide appropriate due process throughout the disciplinary process. The behavior of offenders committed to the custody of the department shall be controlled in an impartial and consistent manner.

II. EXPLANATION:

The Department shall establish and designate Major and Minor Disciplinary Hearing Officers who shall hear and adjudicate all reports of infractions of institutional rules and regulations that are referred to them. These authorities shall be designated as the Major or Minor Disciplinary Hearing Officers, respectively. When inmate behavior requires discipline, procedures shall be followed to ensure that no unnecessary disciplinary are written and that:

A. there is no bias in favor of the charging officer;

B. there is no presumption of guilt;

exhibit ②

2. Examples of several rule violations for a given behavior that should result in one rule charge, the one that most accurately categorizes the behavior:

While exposing himself, an inmate is masturbating at his cell door with all his clothes off while watching an officer and threatening to force the nurse to have sex (Rule 10-3, Indecent Exposure, Rule 05-4, Making sexual threats to another person, and Rule 17-1, an act defined as a felony or misdemeanor by state law, this should result in one charge.

VII. MAJOR DISCIPLINARY COURT:

A. Establishment of Court

The Major Disciplinary Court shall be composed of a single Disciplinary Hearing Officer who will be directed in the performance of those duties by the Disciplinary Hearing Administrator.

B. Responsibilities of the Major Disciplinary Hearing Officer

1. The Major Disciplinary Hearing Officer is charged with the responsibility of ensuring that all rules promulgated by the Arkansas Department of Correction regarding major disciplinary hearings are followed.
2. In all major disciplinary proceedings, the Disciplinary Hearing Officer shall fully explain the charges and inform the inmate of the possible consequences if found guilty. The Disciplinary Hearing Officer shall further ensure that there is no undue air of hostility in the proceedings and that the proceedings and deliberations are not conducted in a perfunctory manner. The Disciplinary Hearing Officer will be vigilant in averting any racial, religious, or gender discrimination during the proceedings and/or in the assessment of punishment. Any such signs of discrimination will be immediately reported to the Warden/Center Supervisor, Disciplinary Hearing Administrator and the Director.
3. The Disciplinary Hearing Officer shall hear all of the facts of the case and shall have singular authority for deciding guilt or innocence and the punishment assessed, except as outlined in the AD on Evaluations for Disciplinary Court Proceedings for Seriously Mentally Ill and Mentally Deficient Inmates regarding punishment, and AR 834, Procedure for Handling Alleged Disciplinary Infractions of Mentally Disordered Inmates.

1. The Major Disciplinary Form F-831-1 will be completed for major disciplinary reports against an inmate and will include specific details of the rule infraction alleged against the inmate. At a minimum, the details shall include who, what, when, where, how, and why the charge is brought. The charging person should be the staff with the most knowledge of the event. Once the disciplinary report is written, the charging person may seek assistance from others for purposes of correcting any mistakes in grammar or punctuation; however, the actual content of the disciplinary report must not be changed.
2. The F-831-1 must be signed by the charging person, affirming that the information in the report is true and correct. Any relevant supporting documents (such as incident reports) should be attached to the major disciplinary form. The completed form with any attachments should be forwarded immediately to the chief security officer. When available this process will be completed electronically in the electronic Offender Management Information System.
3. Any witness(es) to the infraction shall prepare declaration(s) to be attached to the charging person's report of the incident. Witnesses include any inmates, employees, and/or free world persons who have firsthand knowledge of the infraction. Witnesses who appear to testify before the Disciplinary Court will have their statements recorded. If written witness statements are submitted to the Disciplinary Court, these will be read into the record.
4. It will be the responsibility of the Disciplinary Hearing Officer to thoroughly review all available documents concerning the major disciplinary report. He/she will determine whether or not additional information is necessary and may grant an extension of time pursuant to these guidelines if necessary.

B. Hearings

1. The Major Disciplinary Court shall meet or be held by video conference as often as necessary at a convenient place and date between the hours of 6:00 a.m. and 6:00 p.m. In order to administer the institutional disciplinary functions as expeditiously as possible, it is recommended that hearings be held at least weekly. The court should avoid convening on weekends and holidays to minimize interference with inmate visitation; however, if security or administrative necessity as determined by the Warden/Center Supervisor dictates, then the hearings may be held on a weekend or holiday. Any weekend or holiday hearings will

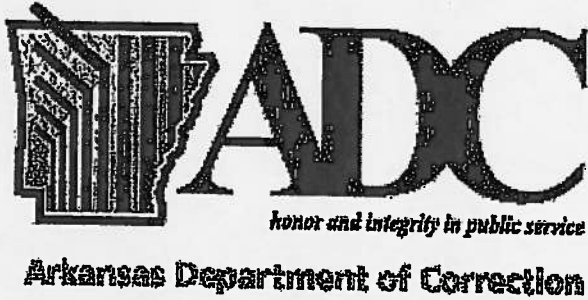
9

witness statements. All witness statements are to be gathered by ADC employees after the inmate has submitted a witness list to the serving officer. Inmates will not be allowed to gather and submit witness statements on their own.

14. After the inmate has made a statement and/or presented a defense, he/she will be asked to step outside the hearing room. The witness statements will then be read into the record followed by the recorder being turned off for deliberation.
15. The Disciplinary Hearing Officer must carefully weigh all evidence with special emphasis upon individual pieces of "primary evidence." Rumor or suspicion about an inmate's behavior shall not be taken into account.
16. After the Disciplinary Hearing Officer has weighed all of the evidence, a decision shall be made regarding guilt/innocence.
17. In the event that the inmate is found guilty, punishment must be imposed within the guidelines established by this policy.
18. The tape recorder will then be turned on again giving the time of day and the inmate returned to the hearing room. The inmate must then be informed as to the finding of guilt or innocence on each particular rule violation and must be informed of the punishment, if any, imposed.
19. The inmate must be informed of his right to appeal and to obtain staff assistance in the formulating of an appeal if needed.
20. The inmate will receive an oral statement detailing the reason for the finding of guilt or innocence at the time the hearing officer informs the inmate of the verdict. The hearing officer will reduce these reasons to writing prior to the conclusion of that business day and provide a typed copy or BSR 100 form generated by electronic Offender Management Information System to the inmate within twenty-four (24) hours. The inmate is not required to sign the typed copy. It is sufficient to indicate that the inmate signed (or refused to sign) the original copy.
21. When the Disciplinary Hearing Officer has completed his/her work for the day, the Disciplinary Hearing Officer shall complete the disciplinary court report.

16

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PO Box 8707
 Pine Bluff, AR 71611-8707
 Phone: 870-267-6200
 Fax: 870-267-6244
 www.adc.arkansas.gov

ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Grievance Procedure

NUMBER: ~~14-16~~

SUPERSEDES: 12-16

APPLICABILITY: All employees and inmates

PAGE 1 of 29

REFERENCE: AR 835 - Grievance Procedure for Offenders

APPROVED: Original signed by Ray Hobbs

EFFECTIVE DATE 04/11/2014

I. POLICY:

It is the policy of the Arkansas Department of Correction to provide inmates in its custody an administrative mechanism for the resolution of complaints, problems and other issues.

II. EXPLANATION:

A grievance procedure is an administrative means for the expression and resolution of inmate problems and complaints. The mechanism is designed to solve the problem at the lowest level, as immediately as feasible, and in a manner that is fair, reasonable and consistent with the Department of Correction's mission.

The administrative mechanism for the resolution of complaints and identification of problem areas is intended to supplement but not replace daily or routine communication between staff and inmates.

III. DEFINITIONS:

- A. Informal Resolution – the first step involving a written complaint (Unit Level Grievance Form, Attachment I) by an inmate that is intended to allow staff the opportunity to resolve an issue on an informal basis; and to serve as a prerequisite

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④

4. Job Assignments unless in conflict with medical restrictions;
5. Disciplinary;
6. Anticipated events (i.e., events or activities which may or may not occur in the future);
7. Matters beyond the control of the Department of Correction, including issues controlled by State or Federal law or regulation;
8. ~~Rejection of a Publication~~

Note: Claims of Retaliation, even if related to an issue referenced above, are Grievable.

~~H. Remedies available do not include disciplinary action against employees, contractors, or volunteers, nor monetary damages. The policy violation/incident/action alleged in the grievance shall be investigated because of the particular grievance if not previously grieved or otherwise prohibited under this grievance policy.~~

- I. Problem-Solving Staff – staff designated at each facility to serve as a contact for resolution of a problem or complaint, and specifically, to resolve step one issues raised in this process. A list of these individuals will be posted in each housing unit. If the problem solver(s) is not available, any staff member of the rank of sergeant or above can collect step one grievances (also referred to as “informal”) and shall then act as the problem solver for that step one grievance.
- J. Medical Department – Health Services Administrator (HSA) or designee.
- K. Mental Health Supervisor – the Department of Correction employee supervising the mental health staff and programs at the unit level.

IV. PROCEDURES:

The inmate grievance procedure is an internal administrative means for the resolution of complaints and the identification of potentially problematic management areas; however, it does not replace daily and routine communication between inmates and staff. Prior to filing a formal grievance, inmates must first attempt to resolve the complaint informally by taking Step One under this policy.

One form (Attachment I) will be used for both Step One (informal resolution), and for Step Two (formal grievance). This same form will be used to submit all inmate grievance issues, including emergencies.

A. Adoption of Procedure

When adopting changes to this procedure, that affect the inmate grievance process, proposed changes shall be posted in prominent locations (to include employee and inmate bulletin boards) throughout the institution at least 30

ARKANSAS STATE CLAIMS COMMISSION



(501) 682-1619
FAX (501) 682-2823

NORMAN L. HODGES, JR.
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823
December 17, 2013

Mr. Deverick Scott, #131042
VSM
P. O. Box 600
Grady, AR 71644-0400

Re: Deverick Scott
Claim #14-0439-CC
Vs.
Department of Corrections

Dear Mr. Scott:

Please be advised that the Respondent in the above-styled claim is disputing liability in an "answer" filed on your claim. This letter does not deal with any motions, discovery request or other matters related to this claim.

When liability is contested by the Respondent, the only alternative available to the Claimant is to appear before the Arkansas State Claims Commission at an oral hearing so testimony and evidence may be presented to refute the position of the Respondent. If you wish to attend a hearing on this claim, please notify this office in writing within fifteen (15) calendar days from the date of this letter and a hearing will be arranged.

If you fail to respond to this letter, or do not wish to pursue this claim at a hearing, this claim will be dismissed at the next meeting of the Claims Commission.

Sincerely,

A handwritten signature in black ink that reads "N. L. Hodges".

Norman L. Hodges
Director

NLH/es

cc: Ms. Lisa Wilkins, Attorney, DOC

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 5,000.00

Claim No. 14-0710-CC

Deverick Scott, #131042 Claimant Pro se Claimant
vs. Attorneys
Department of Correction Respondent Lisa Wilkins, Attorney Respondent
State of Arkansas Respondent
Date Filed March 17, 2014 Type of Claim Failure to Follow Procedure, Claims 1, 2 & 3

FINDING OF FACTS

The Claims Commission hereby unanimously granted the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1 and 2, 4 and 5 and 7 and 8 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously granted the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1 and 2, 4 and 5 and 7 and 8 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing June 12, 2014

Date of Disposition June 12, 2014

Linda May Chairman
Bill Sanchez Commissioner
Jason Moran Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas Supreme Court.

Before The Arkansas State General Assembly

1 of 7

exhibits: 1-6

Deverick Scott #131042

Arkansas
State Claims Commission

Appellant

JUN 30 2014

v.

No. 14-0710-CC

RECEIVED

Arkansas Department of Correction

Appellees

An appeal from the Arkansas State Claims Commission
Comes now the appellant Deverick Scott #131042 pro se
submit his appeal per to act (33) of 1997 before the
Arkansas State General Assembly toward the Arkansas
state claims commission opinion of June 12, 2014

1. The appellant Deverick Scott #131042 pro se request that
the Arkansas State Claims Commission to notify the
Arkansas State General Assembly legislative council that
the appellant has submitted his appeal toward the Arkansas
state claims commission opinion of June 12, 2014
2. The appellant states that he met the (20) days time
requirement and filing his response toward the respondents
attorney Mrs. Lisa Mills Wilkins motion to dismiss ~~of~~ per
to rule 12 (b.) (6) see King v. King, 666 S.W. 21483 (1981)
Big A Whse Distributing, inc v. Bye aout supply inc, 719 S.W. 21716
(1986) Neal v. Wilson, 873 S.W. 21552 (1994) Maas v. Merrell
Assoc, 682, S.W. 20769 (1985) Cornett v. Pratter, 737 S.W. 2159
~~200~~ (1989) Deitsch v. Tiller, 833 S.W. 21760 (1992) and see
Conley v. Gibson, 355 U.S. 46 (1957) citing Service v. Dills, 354 (21

U.S. 363 (1957)

3. The appellant states that his submitted grievances toward appellant exhaustion his administration remedies of grievances will show that the appellant wasn't challenging a due process issue see supporting cited cases as of regional health care facilities inc v. rose care inc, 912 s.w.2d 409 (1995) Wright v. Arkansas state plaintiffs board, 842 s.w.2d 42 (1992) and see Stewart v. Arkansas state police commission, 945 s.w.2d 377 (1997) citing Service v. Dills 354 U.S. 363 (1957) therefore the Arkansas state claims commission opinion of June 12, 2014 shall be vacated.

Claim 1

① The appellant states that the respondents attorney Lisa Mills Wilkinson motion to dismiss should be barred by laches per to A.R.C.P. rule (a) 12(a) and rule 12(b) due to the claimant is challenging the violation of the procedures of Arkansas Directive 11-51 inmate disciplinary manual respondents. (see exhibit: 1) shows the disciplinary officer: A. there is no bias in favor of the charging officer. B. there is no presumption of guilt. (see exhibit: 3) 1: states at a minimum the details should include who, what, when, where, how and why the charge is brought. (see exhibit: 2) U.A.P. 3. states the disciplinary hearing officer shall hear all of the facts of the case and shall have singular authority for deciding guilt or innocent. (see exhibit of claim 1 of original complaint) (2)

and you'll see charging officer laquisha supees only mention she was in cell block 1 not where she was at. And plaintiff pointed out in disciplinary court (see review disciplinary hearing tape: will be available in interrogatories that he was in cell 5 on bottom tier if charging officer was on 3rd tier there was no way she can see on floor under bottom tier in my cell. That's why policy state officer must state where she was at. Keith Waddle disciplinary officer responded "she didn't ~~state~~ state she wasn't there either" on hearing tape. This shows he found claimant guilty on presumption of guilt and being bias violating AD# 11-51 inmate disciplinary manual claimant serve 30 days isolation punitive for Arkansas Rules and Regulations being violated. claimant requested camera be review for witness and was denied without giving reason for denial. King vs. Higgins 702 F.2d 18 deprivation of rights at disciplinary hearing. Moran vs. Farmer 924 F.2d 134 prison officials violated inmates rights at disciplinary hearing by failing to call witness requested by inmate and basing disciplinary decision on incomplete record. Regional Health Care Facilities inc. v. Rosecare inc 912 S.W. 201 409 (1995) Wright v. Arkansas state plant board 842 S.W. 2142 (1992) and see Stewart v. Arkansas state police commission 945 S.W. 20377 (1997) citing Service v. Dulles 354 U.S. 363 (1957).

Therefore claimant stated claim for Arkansas rules and regulations violations causing claimant to suffer 30 days isolation punitive

Claim #2

(2) claimant states that the respondent attorney Mrs. Liss Mills withdrew motion to dismiss on claim #2 be dismiss cause appellees attorney state a dismissal of a incident that is not even the original claim #2 (see exhibit original claim #2 for claim # 14-0710-CC Therefore original claim #2 of original claim should proceed for Arkansas rules and regulations violation. plaintiff suffered 30 days isolation punitive.

Claim #3

The claimant states that the respondents motion to dismiss should be barred by laches per to A.R.C.P. rule 12(A) and rule 12(B) due to claimant is challenging the procedures of AD# 11-51 inmate disciplinary hearing, AD# 14-16 Inmate grievance procedure, AD# 225 Employee conduct standards of respondents Tundra Spencer charging officer and Keith Waddle disciplinary hearing officer. The week before november 14, 2012 claimant wrote tundra spencer up for not doing her job giving everybody in cellblock #1 see claimant cell is pitch black she can't see in his cell (review camera footage will be available as interrogatories) in retaliation she wrote claimant a disciplinary stating he masturbated on her. a violation of 10-3 Indecent exposure, 12-1 failure to obey a order by staff, 17-1 violation of any felony or misdemeanor respondents attorney state claimant fails to inform commission that he was found guilty of failure

to obey an order by staff. Claimant didn't forget. (see exhibit: claimant #3 exhibits of disciplinary, disciplinary hearing sheets, and grievances) you'll see plaintiff was found not guilty of 10-3 indecent exposure charge. If claimant was found not guilty of 10-3 indecent exposure then he didn't violate 12-1 failure to obey a order by staff, 17-1 violation of misdemeanor. The charging officer Keith Waddle found claimant guilty cause he said he don't throw out disciplinary. He refuse to check camera's requested (see exhibit: claim #3 exhibits of original claims grievance's) Moran v. Farier 924 F.2d 134 prison officials violated inmates rights at disciplinary hearing by failing to call witness requested by inmate and basing disciplinary decision on incomplete record. Brooks v. Coughlin, 182 A.D.2d 115, 583 N.Y.S.2d 91 (NY app. Div. 1990) holding hearing officer refusal to look at videotape of incident denied right at disciplinary hearing.

Therefore violating AD # 11-51 Inmate disciplinary manual (see exhibits: 1 attach, 2, 3 attach, and 4.

⑨ The conduct of Tundra spencer to write claimant a retaliation disciplinary for him writing her up on a prisoners grievance violated AD# 14-16 Inmate Procedure (see exhibit 6 attach # 6.6) see exhibits: of claim #3 original exhibits of grievances claimant filed to be investigated and was denied stating disciplinary matters are ungrievable but section G. note: claims of retaliation even

if related to an issue reference above are grievable. (see exhibit: 6) Mauser v. Patterson, 197 F.R.D. 244 upholding jury verdict for plaintiff who was subjected to retaliation disciplinary charge for complaining about a operation of grievance program. Hines v. Gomez, 108 F.3d 265 (9th Cir. 1997) affirming jury verdict for plaintiff subjected to plaintiff for filing grievances. Gaston v. Coughlin, 81 F. Supp. 2d 381 (N.D. N.Y. 1999) awarding damages for trumped-up disciplinary charges made in retaliation for complaining about state law violations. Cause Tundra Spencer couldn't see in claimant cell cause it was pitch black, she don't state where she was at to see claimant. proves the retaliatory motive to falsify OOS report and disciplinary on claimant violation of Ar #225 Employee conduct standards, section 18. B falsification of any verbal or written statements, and employees is not to retaliate on inmate in no type of way for filing grievances or lawsuit.

5) The claimant states that the purposes of a motion to dismiss, all material facts alleged in original complaint for claims #1, 2, 3 are presumed to be true and all reasonable inferences should be construed in the light most favorable to the claimant. see Conley v. Gibson, 335 U.S. 41-46. (1957) Maas v. Mercellascos, 682 S.W. 2d 769 (1985) Cornett v. Pratter 737 S.W. 2d 159 (1987), Deitschi v. Tillery, 833 S.W. 2d 760 (1992) and see Neel v. Wilson, 873 S.W. 2d 552 (1994) citing Service v. Dulles, 354 U.S. 363 (1957)

Wherefore the claimant prays that this Arkansas state claims commission deny the respondents motion to dismiss and set his claims 1, 2, 3 for a hearing.

Certificate of Service

I Devenick Scott # 131042 pro se certify that (5) copies of the foregoing appeal has been mailed to Mr. Norman L. Hedges, Jr. Director of the Arkansas State claims Commission and (4) copies to the Legislative Council at 270 State Capitol 500 Woodlawn Little Rock, Ar 72201 on this 26th day of June 2014.

pro se
 respectfully submitted
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exhibit: ①



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ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Disciplinary Manual

NUMBER: 11-51

SUPERSEDES: 11-52

APPLICABILITY: Inmates and Staff

REFERENCE: AR 851 - Disciplinary Rules and Regulations

PAGE 1 of 43

APPROVED: Original signed by Ray Hobbs, Director

EFFECTIVE DATE: 9/26/2011

I. POLICY:

To ensure that institutional rules and regulations are enforced through an unbiased and prudent fact finder and provide appropriate due process throughout the disciplinary process. The behavior of offenders committed to the custody of the department shall be controlled in an impartial and consistent manner.

II. EXPLANATION:

The Department shall establish and designate Major and Minor Disciplinary Hearing Officers who shall hear and adjudicate all reports of infractions of institutional rules and regulations that are referred to them. These authorities shall be designated as the Major or Minor Disciplinary Hearing Officers, respectively. When inmate behavior requires discipline, procedures shall be followed to ensure that no unnecessary disciplines are written and that:

- A. there is no bias in favor of the charging officer;
- B. there is no presumption of guilt;

Arkansas Claims Commission

MAY 19 2014

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exhibit

2. Example of several rule violations for a given behavior that should result in one rule charge, the one that most accurately categorizes the behavior:

While exposing himself, an inmate is masturbating at his cell door with all his clothes off while watching an officer and threatening to force the nurse to have sex (Rule 10-3, Indecent Exposure, Rule 05-4, Making sexual threats to another person, and Rule 17-1, an act defined as a felony or misdemeanor by state law; this should result in one charge.

VII. MAJOR DISCIPLINARY COURT:

A. Establishment of Court

The Major Disciplinary Court shall be composed of a single Disciplinary Hearing Officer who will be directed in the performance of those duties by the Disciplinary Hearing Administrator.

B. Responsibilities of the Major Disciplinary Hearing Officer

1. The Major Disciplinary Hearing Officer is charged with the responsibility of ensuring that all rules promulgated by the Arkansas Department of Correction regarding major disciplinary hearings are followed.
2. In all major disciplinary proceedings, the Disciplinary Hearing Officer shall fully explain the charges and inform the inmate of the possible consequences if found guilty. The Disciplinary Hearing Officer shall further ensure that there is no undue air of hostility in the proceedings and that the proceedings and deliberations are not conducted in a perfunctory manner. The Disciplinary Hearing Officer will be vigilant in averting any racial, religious, or gender discrimination during the proceedings and/or in the assessment of punishment. Any such signs of discrimination will be immediately reported to the Warden/Center Supervisor, Disciplinary Hearing Administrator and the Director.
3. The Disciplinary Hearing Officer shall hear all of the facts of the case and shall have singular authority for deciding guilt or innocence and the punishment assessed, except as outlined in the AD on Evaluations for Disciplinary Court Proceedings for Seriously Mentally Ill and Mentally Deficient Inmates regarding punishment, and AR 834, Procedure for Handling Alleged Disciplinary Infractions of Mentally Disordered Inmates.

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AD 11-51 - Inmate Disciplinary Manual **Page 14 of 43**

1. The Major Disciplinary Form F-831-1 will be completed for major disciplinary reports against an inmate and will include specific details of the rule infraction alleged against the inmate. At a minimum, the details shall include who, what, when, where, how, and why the charge is brought. The charging person should be the star with the most knowledge of the event. Once the disciplinary report is written, the charging person may seek assistance from others for purposes of correcting any mistakes in grammar or punctuation; however, the actual content of the disciplinary report must not be changed.
2. The F-831-1 must be signed by the charging person, affirming that the information in the report is true and correct. Any relevant supporting documents (such as incident reports) should be attached to the major disciplinary form. The completed form with any attachments should be forwarded immediately to the chief security officer. When available this process will be completed electronically in the electronic Offender Management Information System.
3. Any witness(es) to the infraction shall prepare declaration(s) to be attached to the charging person's report of the incident. Witnesses include any inmates, employees, and/or free world persons who have firsthand knowledge of the infraction. Witnesses who appear to testify before the Disciplinary Court will have their statements recorded. If written witness statements are submitted to the Disciplinary Court, those will be read into the record.
4. It will be the responsibility of the Disciplinary Hearing Officer to thoroughly review all available documents concerning the major disciplinary reports. He/she will determine whether or not additional information is necessary and may grant an extension of time pursuant to these guidelines if necessary.

E. Hearings

1. The Major Disciplinary Court shall meet or be held by video conference as often as necessary at a convenient place and time between the hours of 6:00 a.m. and 6:00 p.m. in order to administer the institutional disciplinary functions as expeditiously as possible. It is recommended that hearings be held at least weekly. The court should avoid convening on weekends and holidays to minimize interference with inmate visitation; however, if security or administrative necessity as determined by the Warden/Center Supervisor dictate, then the hearings may be held on a weekend or holiday. Any weekend or holiday hearings will

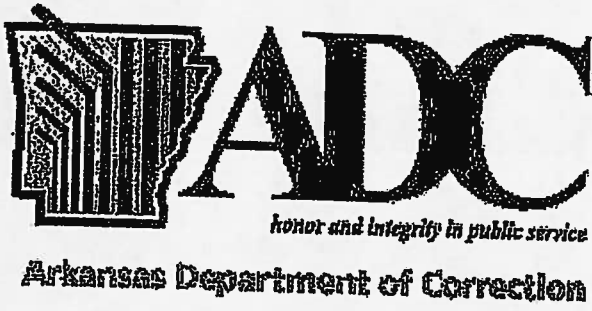
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- witness statements. All witness statements are to be gathered by ADC employees after the inmate has submitted a witness list to the serving officer. Inmates will not be allowed to gather and submit witness statements on their own.
14. After the inmate has made a statement and/or presented a defense, he/she will be asked to step outside the hearing room. The witness statements will then be read into the record followed by the recorder being turned off for deliberation.
 15. The Disciplinary Hearing Officer must carefully watch all evidence with special emphasis upon individual pieces of "primary evidence." Rumor or suspicion about an inmate's behavior shall not be taken into account.
 16. After the Disciplinary Hearing Officer has weighed all of the evidence, a decision shall be made regarding guilt/innocence.
 17. In the event that the inmate is found guilty, punishment must be imposed within the guidelines established by this policy.
 18. The tape recorder will then be turned on again giving the time of day and the inmate returned to the hearing room. The inmate must then be informed as to the finding of guilt or innocence on each particular rule violation and must be informed of the punishment, if any, imposed.
 19. The inmate must be informed of his right to appeal and to obtain staff assistance in the fashioning of an appeal if needed.
 20. The inmate will receive an oral statement detailing the reason for the finding of guilt or innocence at the time the hearing officer informs the inmate of the verdict. The hearing officer will reduce these reasons to writing prior to the conclusion of that business day and provide a typed copy or ISSR 100 form generated by electronic Offender Management Information System to the inmate within twenty-four (24) hours. The inmate is not required to sign the typed copy. It is sufficient to indicate that the inmate signed (or refused to sign) the original copy.
 21. When the Disciplinary Hearing Officer has completed his/her work for the day, the Disciplinary Hearing Officer shall complete the disciplinary court report.

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Arkansas Claims Commission

ADMINISTRATIVE DIRECTIVE

MAY 19 2014
RECEIVED

SUBJECT: Inmate Grievance Procedure

NUMBER: 14-16

SUPERSEDES: 12-16

APPLICABILITY: All employees and inmates

PAGE 1 of 29

REFERENCE: AR 835 - Grievance Procedure for Offenders

APPROVED: Original signed by Ray Hobbs

EFFECTIVE DATE 04/11/2014

I. POLICY:

It is the policy of the Arkansas Department of Correction to provide inmates in its custody an administrative mechanism for the resolution of complaints, problems and other issues.

II. EXPLANATION:

A grievance procedure is an administrative means for the expression and resolution of inmate problems and complaints. The mechanism is designed to solve the problem at the lowest level, as immediately as feasible, and in a manner that is fair, reasonable and consistent with the Department of Correction's mission.

The administrative mechanism for the resolution of complaints and identification of problem areas is intended to supplement but not replace daily or routine communication between staff and inmates.

III. DEFINITIONS:

A. Informal Resolution – the first step involving a written complaint (Unit Level Grievance Form, Attachment I) by an inmate that is intended to allow staff the opportunity to resolve an issue on an informal basis; and to serve as a prerequisite

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4. Job Assignments unless in conflict with medical restrictions;
5. Disciplinary;
6. Anticipated events (i.e., events or activities which may or may not occur in the future);
7. Matters beyond the control of the Department of Correction, including issues controlled by State or Federal law or regulation;
8. ~~Rejection of a Publication~~

Note: Claims of Retaliation, even if related to an issue referenced above, are Grievable.

~~H. Remedies available do not include disciplinary action against employees, contractors, or volunteers, nor monetary damages. The policy violation/incident/action alleged in the grievance shall be investigated because of the particular grievance if not previously grieved or otherwise prohibited under this grievance policy.~~

- I. Problem-Solving Staff – staff designated at each facility to serve as a contact for resolution of a problem or complaint, and specifically, to resolve step one issues raised in this process. A list of these individuals will be posted in each housing unit. If the problem solver(s) is not available, any staff member of the rank of sergeant or above can collect step one grievances (also referred to as “informal”) and shall then act as the problem solver for that step one grievance.
- J. Medical Department – Health Services Administrator (HSA) or designee.
- K. Mental Health Supervisor – the Department of Correction employee supervising the mental health staff and programs at the unit level.

IV. PROCEDURES:

The inmate grievance procedure is an internal administrative means for the resolution of complaints and the identification of potentially problematic management areas; however, it does not replace daily and routine communication between inmates and staff. Prior to filing a formal grievance, inmates must first attempt to resolve the complaint informally by taking Step One under this policy.

One form (Attachment I) will be used for both Step One (informal resolution), and for Step Two (formal grievance). This same form will be used to submit all inmate grievance issues, including emergencies.

A. Adoption of Procedure

When adopting changes to this procedure, that affect the inmate grievance process, proposed changes shall be posted in prominent locations (to include employee and inmate bulletin boards) throughout the institution at least 30

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