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Arkansas
State Claims Commission
OCT 10 2013
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BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Do Not Write in These Spaces	
Claim No.	14-0299-CC
Date Filed	October 10, 2013 (Month) (Day) (Year)
Amount of Claim $	1,000,000.00
Fund	SOA, CLEST

☐ Mr.
☒ Mrs.
☐ Ms.
☐ Miss

PARTNE KIESLING-DAUGHERTY, Claimant

vs.

State of Arkansas, Respondent
State of Arkansas
Commission on Law Enforcement Standards

Mental Anguish, Pain & Suffer:
Refund of Expenses, Loss of Wa

COMPLAINT

PARTNE Kiesling-DAUGHERTY, the above named Claimant, of 805 FORWOOD DR, JACKSONVILLE, (Name) (Street or R.F.D. & No.) (City)
AR 72076 501-350-5679 County of PULASKI represented by PRO SE
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of — PRO SE — , says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: STATE PROSECUTORS & CLEST Amount sought: $1,000,000.00

Month, day, year and place of incident or service: JUNE 24, 2010 - SEPTEMBER JULY 16, 2013.

Explanation: ON AUGUST 3, 2011, THE STATE OF ARKANSAS THROUGH ITS CONSTITUTIONALLY CREATED PROSECUTORS MALICIOUSLY PROSECUTED ME AND OBTAINED A WRONGFUL CONVICTION. AS A DIRECT RESULT, I RECEIVED A 30 DAY SENTENCE AND WAS IMMEDIATELY TRANSPORTED TO JAIL. THE TRIAL JUDGE SENTENCED ME AND DENIED ME A BOND. I RECEIVED PHYSICAL, EMOTIONAL, PSYCHOLOGICAL, AND ECONOMICAL DAMAGES AS A DIRECT RESULT. THOSE ARE MORE SPECIFICALLY DESCRIBED IN ATTACHMENTS.

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?
YES ; when? 10-10-2012 ; to whom? ARKANSAS SUPREME COURT
(Yes or No) (Month) (Day) (Year) (Department)
THIS CLAIM ; and that the following action was taken thereon: TOLD, NO IN PART, TO FILE
THIS CLAIM MANDATE ISSUED 10-10-2012
and that $ — was paid thereon: (2) Has any third person or corporation an interest in this claim? NO ; if so, state name and address
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: — ; and was acquired on — , in the following manner:

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.

PARTNE DAUGHERTY
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

ANTHONY L. JOHNSON
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires June 24, 2019
Commission # 12371852
(SEAL)

SWORN TO and subscribed before me at JACKSONVILLE AR
(City) (State)
on this 10th day of October 2013
(Date) (Month) (Year)

(Notary Public)

My Commission Expires: June 24, 2019
(Month) (Day) (Year)

SF1- R7/99

STATEMENT OF CLAIM

As a result of prosecutorial misconduct by the State's Prosecutors under elected-Prosecutor Larry Jegley, I was wrongfully convicted of a CLASS C MISDEMEANOR [violation of A.C.A. § 27-51-201] and sentenced to a THIRTY (30) sentence of incarceration in the Pulaski County Jail, which was reduced due to good-time credits earned for serving as an *Indentured Servant* in the Pulaski County Detention Facility Kitchen.

Ultimately, I served fifteen (15) days in jail, was denied adequate medical care, received physical injuries as a direct result of my servitude in the kitchen, made to suffer from a pre-existing injury which contraindicated working in the kitchen. I was provided with NASTY, inadequate footwear and no socks, to work in the wet kitchen, and I became infected for a foot fungus. I suffered a back injury from a fall, which also intensified an existing bladder issue. I had received surgery in May of 2011, and the conditions of my incarceration cause severe pain and difficulty with the healing process.

I suffered from loss of freedom, economic loss related to the costs associated from defending myself in the legal criminal action which resulted in incarceration. I lost income as a result of the incarceration. I was forced to spend over $6,000.00 to hire an attorney to represent me in an IRS audit because I could not have direct communications with Law Enforcement Officers until the appeal was resolved, in case it was remanded for a new trial (instead of dismissal). Upon termination of the appellate proceedings, I took over my representation with the IRS and received more favorable results than those that I was having through the hired counsel. My family went through total hell as a result of the State Prosecutors' actions. To this date, I continue to suffer from distrust of Police Officers and the Legal System as a whole. There has been no accountability.

The malicious prosecution resulted in a total of approximately $16,000.00 in total attorney fees and approximately $3000.00 in actual filing fees, copy fees, appellate brief copy and binding fees, transcripts, etc. I asking for actual, compensatory, and compensation against the State of Arkansas for the actions of its Prosecutors, and against the State of Arkansas for CLEST and for the actions of its employees.

STATEMENT OF CASE

Prior to trial, I spoke with CLEST Director Ken Jones regarding this matter, yet he chose to refrain from acting regarding Huddleston's invalid radar operator certification and permitted CLEST to continue its practice of issuing invalid radar operator certification, in violation of Arkansas state law. Furthermore, someone in CLEST [and the State prosecutors] concealed a document regarding Huddleston's invalid radar operator certifications. To date, CLEST continues its illegal practice.

The State of Arkansas, via its Prosecutors as provided for by the Arkansas Constitution, turned a blind-eye to Arkansas Statutory law and maliciously prosecuted me for violation of **A.C.A. § 27-51-201, ["SPEEDING IN EXCESS OF 15 MPH OVER SPEED LIMIT"]**, a Class "C" Misdemeanor criminal offense, for which I faced a $500.00 fine and a ***THIRTY DAYS (30)*** jail sentence. The State withheld exculpatory CLEST documentary evidence and suborned perjury of Alvin Burnt, a CLEST document examiner/employee, to obtain a wrongful conviction against me.

At trial, the State engaged in very unsavory courtroom theatrics to convince a jury to ignore the facts and law to render a "Guilty" verdict. This included pointing at me while screeching: "THAT WOMAN!" This was further complicated by the State prosecutors' improper closing arguments where two prosecutors pointed at the empty witness box and then point at me while telling the jury that I did not present *any* evidence that I was not speeding. These were clear references to the fact that I did not testify, which was the *only* actual evidence that I could have presented to refute the speeding accusation. These references violated my constitutional right NOT TO TESTIFY. The State Prosecutors engaged in this prosecutorial misconduct to imply guilt by my decision not to testify. [This decision was based upon the fact the State presented insufficient evidence to prove guilt, a *rare* finding later held by the appellate courts].

Circuit Court Judge Barry Sims should have granted a directed verdict when the State rested its case. Because of judicial error, my counsel was forced to present my substantial evidence and case to defend my interests. Ultimately, the issue was improperly submitted to a jury and which resulted in my wrongful conviction because Circuit Judge Barry Sims could not even properly rule on a simple speeding ticket case. Judge Sims did express a desire to merely fine me, but the State Prosecutors objected and demanded the right to seek the maximum sentence from the jury, which was the ultimate outcome. The Coup de Grace was when Judge Sims denied me an appeal bond and ordered the bailiff to cuff me and send me to the county jail to serve my sentence, prior to the benefit of an appeal.

On June 24, 2010, Jacksonville Police Officer Paul Huddleston illegally cited me for Speeding at 51 MPH in a 35 MPH zone. I had just exited the Jacksonville Kroger parking lot and drove North bound on Second Street towards Lowes prior to the traffic stop. During the traffic stop, a second JPD Officer (Joshua Wheeler) called Huddleston's cell phone to trash talk me and my family. This was inappropriate and unprofessional communication was caught on the audio of the dash video camera.

At a later date, I discovered that I had not passed the location which Huddleston had been improperly and illegally operating a GHD radar gun. However, the JPD destroyed the video which captured all passing cars as Huddleston operated the radar gun. The destroyed video would have proven my Actual Innocence, but for the evidentiary destruction at the hands of the police.

After numerous FOIA and many hours of research, I learned that Huddleston lacked Jurisdiction under Arkansas to operate a radar gun as his radar operator certification was invalid. Every ticket written by Officer Huddleston [and similarly situated Law Enforcement Officers] are invalid as a matter of law under **A.C.A.** § 12-9-404.

In a pattern of misconduct and thumbing its nose to the law, the Arkansas Commission on Law Enforce Standards and Training, then and now, continues to violate the law in its improper issuance of radar operator certifications in violation of **A.C.A.** § 12-9-403, 12-9-404, and its own CLEST Regulations on file with the Arkansas Secretary if State. Huddleston was improperly operating a radar gun under conditions and circumstances which rendered the results unreliable and inadmissible in Court and towards the sufficiency of evidence, in addition to his lack proper radar certifications necessary to be certified as a radar operator under well-established Arkansas law.

Huddleston was operating the radar gun from behind a tall brick wall which surrounds an apartment complex while facing Two (2) Cellular towers. Huddleston could only visualize the passing traffic for about 2 seconds as the vehicles passed the 30 foot wide opening in the wall. This blink of an eye time frame was not sufficient for Huddleston to perform the necessary actions to produce admissible and reliable radar results, regardless of who passed Officer Huddleston. Operating a radar gun near cell towers is improper as it will yield erratically high, unreliable, and inadmissible radar results. Furthermore, Huddleston's location was within an unacceptable distance of a police vehicle parked at the Bank of America, which containing CLASSIFIED BROADCASTING AND TRACKING SURVEILLANCE EQUIPMENT used by State and Federal Law Enforcement Agencies for known and unknown purposes. This equipment is parked at many banks, convenience stores, and other businesses close to highways.

Neither Huddleston nor the JPD maintained any calibration logs necessary to ensure the accuracy of the radar gun. Despite two major repairs, Huddleston's radar gun had not been recertified in over four (4) years despite the manufacturer's recommendations to recertify the gun at least every two (2) years. Huddleston was unable to identify which tuning fork originally came with the radar gun, upon which the radar guns proper shift and regular operation calibrations required.

To compound the issue, CLEST issued Huddleston an invalid radar certification without ensuring that Huddleston met the statutory qualifications under A.C.A.§ 12-9-403(f) for radar operator certification, much less qualifications under CLEST Regulations. Huddleston lacked the necessary hours of CLEST Commission-required training for *officer certification* to even be eligible to enroll in the radar operator course.

STATEMENT OF LAW

Rule 54(B)(e) of the Arkansas Rules of Civil Procedure permit that I may recover attorney fees, costs, etc. **Article 2, § 3**[1], of the Arkansas Constitution guarantees me Equality Before the Law. **Article 2, § 7**[2], of the Arkansas Constitution guarantees me a right to a jury trial to address the claims herein (but the State has created to Commission to void that right).

Article 2, § 13[3], of the Arkansas Constitution guarantees me a right to Redress of Wrongs, which the State will ask this Commission to deny. **Article 2, § 21**[4] , of the Arkansas Constitution guarantees me a right not to be deprived of my Life, liberty and Property without just compensation.

Article 2, § 29[5] , of the Arkansas Constitution guarantees me all Rights from **Article 2,** of the Arkansas Constitution, without exception, and Protects against encroachment of these rights. **Article 2, § 29** , goes as far as to declare that all laws contrary thereto, or to other provisions contained within the Arkansas Constitution, "shall be void", thereby *voiding* the State's Sovereign Immunity as it is contrary thereto **Article 2. Article 2 § 29** would have to have been amended to include the sovereign immunity exception before or at the same time as the Sovereign Immunity provision of the Arkansas Constitution was adopted. I asked that this Commission rule upon this issue fully, and, in detail, provide any reason why the

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[1] **3. Equality before the law.** The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.

[2] **7. Jury trial - Right to - Waiver - Civil cases - Nine jurors agreeing.** The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law; and in all jury trials in civil cases, where as many as nine of the jurors agree upon a verdict, the verdict so agreed upon shall be returned as the verdict of such jury, provided, however, that where a verdict is returned by less than twelve jurors all the jurors consenting to such verdict shall sign the same. [As amended by Const. Amend. 16.]

[3] **13. Redress of wrongs.** Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.

[4] **21. Life, liberty and property - Banishment prohibited.** No person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land; nor shall any person, under any circumstances, be exiled from the State.

[5] **29. Enumeration of rights of people not exclusive of other rights - Protection againstencroachment.** This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

Sovereign Immunity provision should limit my rights under **Article 2, § 29** , of the Arkansas Constitution.

The State's actions were malicious and vindictive, and lacked a legal basis to pursue the charge against me based upon JPD Police Officer Huddleston's invalid CLEST-issued radar operator certification and his written citation to me, which were void as a matter of law.

To compound the issue, CLEST issued Huddleston an invalid radar certification without ensuring that Huddleston met the statutory qualifications under A.C.A.§ 12-9-403(f) for radar operator certification, much less CLEST Regulations. Despite the mandatory language of **A.C.A. § 12-9-403** and corresponding CLEST Regulations, Huddleston failed to complete the *requisite* (432) hours of CLEST Commission-required training for *officer certification* ***before*** being eligible for enrolling in and completing the radar operator certification class ***before*** being eligible for certification as a police traffic radar operator:

12-9-403. Appointment and training

> (f) A law enforcement officer *shall complete the commission-required training for officer certification before being eligible* for certification as a police traffic radar operator.

This statutory language is *mandatory*, not discretionary. The ALETA Law Enforcement Academy in Camden, Arkansas, failed to ensure that Huddleston and *MANY* other unqualified cadets met the *statutory pre-qualifications,* to enroll in the radar operator course. This illegal practice has permitted and promoted the illegal issuance of invalid radar certifications to an untold number of law enforcement officers throughout Arkansas. CLEST has compounded this problem by illegally sanctioning this practice and appointing unqualified persons as police radar operators before the minimum standards for training requirements have been completed, in violation of A.C.A. § 12-9-403(a).

12-9-403. Appointment and training.

> **(a)** No person shall be appointed as a police traffic radar operator or police traffic radar instructor until the minimum standards for training requirements have been completed.

Indeed, these errors are not harmless. A.C.A. § 12-9-403(e) specifically denies Huddleston (and others) lawful authority and jurisdiction to operate a police radar for enforcement purposes as a direct result of his "failing to meet the training requirements as set forth in this subchapter".

12-9-403. Appointment and training.

> (e) Any police traffic radar operator or police traffic radar instructor failing to meet the training requirements as set forth in this subchapter shall lose his or her authority to operate a police traffic radar for enforcement purposes.

Thus, ***every*** radar traffic citation issued by Huddleston [and similarly situated law enforcement officers] are void as a matter of law pursuant to **A.C.A § 12-404.**

12-9-404. Failure to meet standards.

> A police traffic radar operator who does not meet the standards and qualifications set forth in this subchapter or any made by the Arkansas Commission on Law Enforcement Standards and Training shall not take any official action as a police traffic radar operator and any action taken shall be held as invalid.

Huddleston's citation was further complicated by the fact that the GHD radar gun had a +/- MPH accuracy variance. Thus a reading of 16 mph over the speed limit could, under normal and proper operating circumstances, could only guarantee an accuracy of 15 MPH over the speed limit, not the 16 MPH contained within Huddleston's citation. That one MPH accuracy variance made a difference as to whether the cited offense would be considered a civil traffic offense or a MISDEMEANOR criminal offense in which I faced up, and did in fact receive, a thirty (30) day jail sentence.

Despite these obvious errors which rendered Huddleston's citation void as a matter of law and notification of these errors by trial counsel attorney C. Daniel Hancock, the Prosecutor for the City of Jacksonville, and Prosecutors under the supervision of elected-Prosecutor Larry Jegley chose to maliciously prosecute me and further sought to specifically have me sentenced to a period of incarceration for daring to question and challenge their authority and that of the Jacksonville Police Department. Indeed, the Prosecutors objected to the trial Judge dismissing the jury and sentencing me to a fine.

The State wanted blood as it put on its circus clown show for an entire day before a sitting jury. Two prosecutors actually represented the State in trying the case, and, at one point in time, approximately seven (7) more Prosecutors sat in the court room for most of the day to watch the Radar Gun/Speeding trial of the century. .... Wasting enormous amounts of tax dollars to maliciously prosecute me.

Ultimately, the appellate court held that the State failed miserably to present sufficient evidence in its case to sustain a conviction, a rare appellate decision. On October 10, 2012, the Arkansas Court of Appeals reversed and dismissed my misdemeanor conviction and sentence for speeding in excess of 15 mph over the speed limit.

Defendant's Full Name: **KIESLING-DAUGHERTY, PARTNE**

JUDGMENT AND DISPOSITION ORDER
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH JUDICIAL DISTRICT, SEVENTH DIVISION

On **8/3/2011** the defendant appeared before the Court, was advised of the nature of the charges(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

Defendant's Full Name.....:	**KIESLING-DAUGHERTY, PARTNE**
Date Of Birth.....:	**12/12/1970**
Race.....:	**WHITE**
Sex.....:	**FEMALE**
SID #.....:	
Defendant's Attorney.....:	**DAN HANCOCK**
Prosecuting Attorney or Deputy.....:	**KATHLEEN MCDONALD**

FILED 08/11/11 10:13:59
Larry Crane Pulaski Circuit Clerk
CLP

Defendant was represented by .....: _X_ private counsel ___ appointed counsel
___ public defender ___ himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
___Yes _X_No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Punishment rules and regulations.

TOTAL NUMBER OF COUNTS: 1

Offense #: 1

Docket #: CR 2010-3498
Arrest Tracking # :

A.C.A.# of Offense: **27-51-201**
Name Of Offense: **SPEEDING IN EXCESS OF 15 MPH OVER SPEED LIMIT**
Seriousness Level Of Offense: **NA**
Criminal History Score: **NA**
Presumptive Sentence: **NA**
Sentence is a departure from the sentencing grid: **__NA_Yes _NA_No**
Offense is a **Misdemeanor**
Classification of Offense: **C**
Period of Confinement: **30 days.**
Suspended Imposition of Sentence..: ___NA__ months.
Period of Probation: __NA___ months.
Defendant is assigned to **County Jail**
Special conditions of confinement are attached. **No**
Defendant _NA__ attempted _NA__ solicited _NA__ conspired to commit the offense.
Offense Date: **6/24/2010**
Number of Counts: **1**
Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. ___Yes
_X_No
Age of the victim of the offense if he or she was under 18 years of age at the time the offense occurred **NA**
Defendant voluntarily, intelligently, and knowingly entered a
_NA__ negotiated plea of guilty or nolo contendere.
_NA__ plea directly to the court of guilty or nolo contendere.
Defendant
___ entered a plea as shown above and was sentenced by a jury.
___ was found guilty of said charge(s) by the court, and sentenced by
_X_ was found guilty at a jury trial, and sentenced by ___ the court _X_ a jury.
___ Defendant committed a target offense and was sentenced under the Community Punishment Act. Upon successful completion of the conditions of probation/S.I.S. Defendant shall be eligible to have his/her records sealed. NO
Defendant was sentenced pursuant to the First Offender Act(Ark. Code 16-93-301 et seq.) **No.**

60CR-10-3498 601-60100030217-831
STATE V PARTNE DAUGHERTY 2 Pages
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CIRCUIT COURT JJ20

8

Defendant's full name : **Kiesling-daugherty, Partne**

Jail Time Credit: **0** days.
Conditions of the disposition or probation are attached. **No**
A copy of the pre-sentence investigation on sentencing information, including but not limited to criminal history elements is attached.
___ Yes _X__ No.
Fines **$ 500.00** Court Costs **YES** DNA Sample Fee (A.C.A. 12-12-1118) **NO**
Drug Crime Special Assessment (A.C.A. 12-17-106) **NO** Booking and Admin. Fee (A.C.A. 12-41-505) **NO**
Public Defender User Fee (A.C.A. 16-87-213) **NO**

A judgment of restitution is hereby entered against the Defendant in the amount and terms as show below:
Amount: **NA** Due immediately: **NA** Installments of: **NA**
Payment to be made to:
If multiple beneficiaries, give names and show payment priority:

Defendant was convicted of, or has entered a plea of guilty or *nolo contendere* to, a "drug crime," as defined by A.C.A. 12-17-101 *et seq.* ___Yes _X_No

Defendant has been adjudicated guilty of an offense requiring registration as a sex offender, and is ordered to complete the Sex Offender Registration Form: ___Yes _X_No
Defendant adjudicated guilty of an offense requiring registration as a sex offender has been adjudicated guilty of a prior sex offense under a separate case number: ___Yes _X_No
Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: ___Yes _X_No

Defendant has committed an aggravated sex offense, as defined in A.C.A. 12-12-903. ___Yes _X_No
Defendant was adjudicated guilty of a felony offense, a misdemeanor sexual offense, or a repeat offense (as Defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at: ___Yes _X_No

Defendant was adjudicated guilty of a domestic-violence offense. ___Yes _X_ No
If yes, identify the relationship of the victim to the Defendant. _____NA_____
If no, was Defendant originally charged with a domestic-violence related offense? ___Yes _X_ No
If yes, state the name of the offense _____NA_____.

Other Conditions: _____

Defendant was informed of the right to appeal: _X__Yes __No
Appeal Bond: $ N/A
The County Sheriff is hereby ordered to **transport the Defendant to the County Jail.**
Defendant shall report to the probation officer for assignment of a reporting date to a Regional Correctional Facility.

DPA Initials: KMM

Date: Circuit Judge: BARRY SIMS Signature: _____
I certify this is a true and correct record of this Court.

Date: Circuit Clerk/Deputy: _____

(Seal)

SEAL OF THE CIRCUIT COURT PULASKI COUNTY, ARKANSAS

Form Revised 5/2010

MANDATE

MOTION FOR COSTS DENIED

PROCEEDINGS OF JUNE 27, 2013

SUPREME COURT CASE NO. CR-11-1137

PARTNE KIESLING-DAUGHERTY — APPELLANT

V. APPEAL FROM PULASKI COUNTY CIRCUIT COURT, 7TH DIVISION
(NO. CR-10-3498)

STATE OF ARKANSAS — APPELLEE

THIS MOTION WAS SUBMITTED TO THE ARKANSAS SUPREME COURT ON THE RECORD OF THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION, AND BRIEFS OF THE RESPECTIVE PARTIES. AFTER DUE CONSIDERATION, IT IS THE DECISION OF THE COURT THAT THE MOTION FOR COSTS IS DENIED FOR THE REASONS SET OUT IN THE ATTACHED OPINION.

BAKER AND HART, JJ., DISSENT.

IN TESTIMONY, THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE JUDGMENT OF THE ARKANSAS SUPREME COURT, I, LESLIE STEEN, CLERK, SET MY HAND AND AFFIX MY OFFICIAL SEAL, ON THIS 16TH DAY OF JULY, 2013.

Leslie W. Steen

LESLIE STEEN, CLERK

SUPREME COURT OF ARKANSAS

No. CR-11-1137

PARTNE KIESLING-DAUGHERTY APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered June 27, 2013 MOTION FOR COSTS, FROM PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION (NO. 60CR-10-3498) DENIED.

JIM HANNAH, Chief Justice

Partne Kiesling-Daugherty has filed a motion for award of costs on appeal. Kiesling-Daugherty was cited for driving sixteen miles over the speed limit. After being fined in the Jacksonville District Court, she appealed to the Pulaski County Circuit Court, where a jury convicted her of speeding in excess of fifteen miles per hour over the speed limit. She appealed to the Arkansas Court of Appeals, which reversed and dismissed her conviction on September 19, 2012. *See Daugherty v. State*, 2012 Ark. App. 512. Kiesling-Daugherty then filed a motion for award of costs on appeal, pursuant to Arkansas Supreme Court Rule 6-7 (2012). The State responded that sovereign immunity bars Kiesling-Daugherty from recovering costs from the State. We accepted certification of this motion from the court of appeals to determine whether, in this case, the State may be liable for costs under Rule 6-7, which provides in relevant part as follows:

> (b) Reversal. The appellant may recover (1) brief costs not to exceed $3.00 per page with total costs of the brief not to exceed $1000.00, (2) the filing fee of $150.00 and the technology fee of $15.00, (3) the circuit clerk's costs of preparing the record, and

(4) the court reporter's cost of preparing the transcript.

The State contends that, notwithstanding the Rule, it is not liable for payment of costs in this case because it has sovereign immunity. Article 5, section 20 of the Arkansas Constitution provides that "[t]he State of Arkansas shall never be made a defendant in any of her courts." In determining whether the doctrine of sovereign immunity applies, the court must decide if a judgment for Kiesling-Daugherty would operate to control the action of the State or subject it to liability. *LandsnPulaski, LLC v. Ark. Dep't of Correction*, 372 Ark. 40, 42, 269 S.W.3d 793, 795 (2007). If so, the suit is one against the State and is barred by the doctrine of sovereign immunity, unless an exception to sovereign immunity applies. *See id.*, 269 S.W.3d at 795.

In this case, a judgment for costs against the State would subject it to liability. Therefore, Kiesling-Daugherty's claim against the State is barred by the doctrine of sovereign immunity unless an exception applies.[1] Kiesling-Daugherty contends that the doctrine of sovereign immunity does not preclude the award of costs on appeal in this case because the State is the moving party seeking specific relief. In support of her contention, she avers that the State is the party that brought the criminal complaint against her, pursued the case

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[1]This court has recognized three ways in which a claim of sovereign immunity may be surmounted: (1) where the State is the moving party seeking specific relief, (2) where an act of the legislature has created a specific waiver of sovereign immunity, and (3) where the state agency is acting illegally or if a state agency officer refuses to do a purely ministerial action required by statute. *Ark. Dep't of Cmty. Correction v. City of Pine Bluff*, 2013 Ark. 36, at 4, ___ S.W.3d ___, ___. Although we have recognized that the legislature may create a specific waiver of sovereign immunity by statute, *see id.*, ___ S.W.3d at ___, we have not held that this court can create a specific waiver of sovereign immunity by court rule.

through the district court and the circuit court, and defended its position on appeal at the court of appeals. She asserts that Rule 6-7 applies to all parties before this court and that when the State "subjects itself" to this court, then it must abide by the rules of this court.

In *Arkansas Department of Human Services v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993), the Department of Human Services ("DHS"), a state agency,[2] petitioned for custody of certain juveniles, and in a subsequent action for court costs and restitution arising from the offenses these juveniles had committed, DHS claimed that the doctrine of sovereign immunity prohibited the assessment of costs and restitution against DHS. The juvenile court ruled that DHS had waived sovereign immunity by obtaining custody of each juvenile and by appearing in the delinquency proceedings. *Id.* at 488, 850 S.W.2d at 851. We reversed, explaining that

> [i]n none of the proceedings now before us was DHS the initial moving party. Its appearances subsequent to the complaints being filed against the juveniles was pursuant to DHS's obligation to obtain custody of the juveniles in the dependency-neglect proceedings and appear in the delinquency proceedings. The Juvenile Court recognized this by stating, "In order for them [DHS] to carry out their assigned responsibilities they must initiate Petitions in Juvenile Court and thus voluntarily subject themselves to the jurisdiction of that Court." . . . DHS was under an obligation to appear. It thus did not voluntarily waive sovereign immunity.

Id. at 488–89, 850 S.W.2d at 851.

In the instant case, after receiving information that Kiesling-Daugherty had committed a traffic violation, the prosecuting attorney pursued a criminal charge against her. In doing so, the prosecutor carried out his duty "of filing informations against those he deems guilty and refusing to file against those he believes to be innocent." *See Venhaus v. Brown*, 286 Ark. 229,

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[2]This court has extended the doctrine of sovereign immunity to include state agencies. *Id.* at 3, ___ S.W.3d at ___.

230, 691 S.W.2d 141, 143 (1985). On appeal, the duties of the prosecutor were transferred to the Office of the Attorney General ("AG"), which must "prosecute or defend for the State in cases brought into this Court." *See Siverburg v. State*, 30 Ark. 39, 40 (1875); *see also* Ark. Code Ann. § 25-16-704(a) (Repl. 2002) ("The Attorney General shall attend the several sittings of the Supreme Court and shall maintain and defend the interests of the state in all matters before that tribunal."). Here, to carry out its duty, the AG was obligated to represent the State on appeal and thus voluntarily subjected itself to the jurisdiction of the appellate court. *See Ashcraft v. State*, 141 Ark. 361, 363, 222 S.W. 376, 367–77 (1919) (per curiam) (noting that the Attorney General is required to represent the State in criminal appeals). The AG did not, however, voluntarily waive sovereign immunity when it was under an obligation to appear. *See Ark. Dep't of Human Servs. v. State*, 312 Ark. at 489, 850 S.W.2d at 851. Accordingly, we deny the motion for costs on appeal.

Motion denied.

BAKER and HART, JJ., dissent.

SUPREME COURT OF ARKANSAS

No. CR-11-1137

PARTNE KIESLING-DAUGHERTY APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered June 27, 2013 DISSENTING OPINION.

KAREN R. BAKER, Associate Justice

I dissent from the majority opinion because sovereign immunity does not preclude the assessment of costs pursuant to Arkansas Supreme Court Rule 6-7 (2012).

Sovereign immunity is jurisdictional immunity from suit. *State v. Goss*, 344 Ark. 523, 42 S.W.3d 440 (2001); *Milberg, Weiss, Bershad, Hynes & Lerach, LLP v. State*, 342 Ark. 303, 28 S.W.3d 842 (2000). Here, Daugherty has not initiated suit or execution against the State for the costs that would allow the State to claim sovereign immunity. Rather, Daugherty is seeking assessment of costs in accordance with Rule 6-7. Pursuant to the rule, the circuit court's decision was reversed on appeal, and thus she is entitled to costs.

While we determine liability for costs, it is the circuit court that renders judgment. *Trice v. City of Pine Bluff*, 282 Ark. 251, 252, 667 S.W.2d 952, 953 (1984). It is well established that an appellant who wins reversal is entitled to recover appeal costs. *Powell v. State*, 233 Ark. 438, 345 S.W.2d 8 (1961). Daugherty has a statutory remedy. *Id.* (citing earlier version of Ark. Code Ann. § 16-92-105(d) (Repl. 2007). Additionally, Daugherty might seek payment of her costs from the State through the Arkansas State Claims

Commission. *See Milberg supra; see also* Ark. Code Ann. § 19-10-201 to -215 (Repl. 2006 & Supp. 2011). In accordance with Rule 6-7, this court should assess costs against the State.

Thus, I respectfully dissent.

SUPREME COURT OF ARKANSAS

No. CR-11-1137

PARTNE KIESLING-DAUGHERTY APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** JUNE 27, 2013 DISSENTING OPINION.

JOSEPHINE LINKER HART, Associate Justice

After the Arkansas Court of Appeals reversed and dismissed her conviction, Daugherty filed a motion seeking recovery of her costs in accordance with Arkansas Supreme Court Rule 6-7 (2012). Because she is entitled to recovery of costs under the rule, we should grant.

The majority confuses liability for costs with execution of a judgment for costs. We determine liability for costs. *Trice v. City of Pine Bluff*, 282 Ark. 251, 667 S.W.2d 952 (1984). Further, this court has established that an appellant who wins reversal is entitled to costs incurred on appeal. *Powell v. State*, 233 Ark. 438, 345 S.W.2d 8 (1961). Whether Daugherty would be entitled to a writ of execution against the State is not an issue before this court because it was not part of her petition. While the State argues that sovereign immunity prevents recovery of costs, its argument is premature. It fails to recognize that Daugherty has not filed a suit against the State of Arkansas but instead seeks, as Rule 6-7 permits her to do, reimbursement for costs she expended before her appeal could be heard in the Arkansas Court of Appeals.

The executive branch as represented by the Attorney General's Office fails to recognize that this court is an equal branch of the three branches of government that constitute the sovereign, and it was this court acting as "the sovereign" that promulgated rules requiring Daugherty to pay these costs and the rule providing for recovery of her costs on reversal of her conviction. *See In re Supreme Court License Fees*, 251 Ark. 800, 483 S.W.2d 174 (1972) (noting that the judiciary is a coordinate branch of the state government, of equal dignity with the legislative and executive departments). It is untenable that one branch of "the sovereign" could neutralize the power of an equal branch of "the sovereign" by imposing the defense of sovereign immunity, thus stripping that branch—the judiciary—of its constitutionally granted rulemaking authority. This court's interest in orderly, expeditious proceedings justifies the imposition of costs, and the power to make an award of costs is incident to our inherent jurisdiction and authority over the orderly administration of justice between all litigants. *See generally Hutto v. Finney*, 437 U.S. 678, 696 (1978). Daugherty also has a statutory remedy, *see Powell, supra* (citing an earlier version of Ark. Code Ann. § 16-92-105(d) (Repl. 2006)), which also was promulgated by an equal branch of the government, the legislature, in its capacity as "the sovereign." The executive branch likewise cannot neutralize the power of the legislative branch by claiming sovereign immunity.

In accordance with Rule 6-7, this court should assess costs against the State and direct the clerk to issue a mandate showing that Daugherty may recover costs on appeal. The majority's holding restricts this court's authority to award costs to a prevailing citizen in an appeal before this court. In doing so, it ignores the Arkansas Constitution's grant of authority

to this court to accomplish its constitutionally mandated functions under amendment 80 and this court's attendant promulgation of Rule 6-7.

Thus, I respectfully dissent.

MANDATE
REVERSED AND DISMISSED

Proceedings of September 19, 2012.

CACR11-1137
PARTNE KIESLING DAUGHERTY APPELLANT

V. Appeal from Pulaski Circuit, Seventh Division
(CR-10-3498)

STATE OF ARKANSAS APPELLEE

This case was submitted to the Arkansas Court of Appeals on the record of the Circuit Court of Pulaski County and briefs of the respective parties. After due consideration, it is the decision of the Court that the case be reversed and dismissed for the reasons set out in the attached opinion.

Pittman and Gruber, JJ., agree.

In testimony, that the above is a true copy of the judgment of the Court of Appeals. I, Leslie Steen, Clerk, set my hand and affix the seal, this 10th day of October, 2012.

Julie W. Steen Renee Herndon, D.C.
Clerk

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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-1137

PARTNE KIESLING DAUGHERTY APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** SEPTEMBER 19, 2012 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION [NO. CR-10-3498] HONORABLE BARRY SIMS, JUDGE REVERSED AND DISMISSED

CLIFF HOOFMAN, Judge

Appellant Partne Kiesling Daugherty appeals her conviction for speeding in excess of fifteen miles per hour (mph) over the speed limit. On appeal, she argues that there is insufficient evidence to support her conviction. We agree; thus, we reverse and dismiss.

Appellant was cited for driving 16 mph over the speed limit—51 mph in a 35 mph zone. After being fined in district court, appellant appealed to Pulaski County Circuit Court, and a jury trial was held. Officer Paul Huddleston of the Jacksonville Police Department testified that he was performing radar enforcement on June 24, 2010, when he first visually estimated appellant's speed at 50 mph and then verified her speed as 51 mph with a radar device. Huddleston testified that he was trained to visually estimate speed within plus or minus two mph. A certificate, dated October 1, 2009, qualifying Huddleston as a "Certified Police Traffic Radar Operator" was admitted into evidence.

Huddleston testified that the radar gun he used was certified and calibrated. A

certificate certifying that the radar device "has been checked for accuracy and correctness of operation" was admitted into evidence. It was dated December 30, 2005, and certified that the device was "accurate within +/- 1 mph." Huddleston testified that on the day of appellant's citation, he had performed a tuning fork test and an internal circuit test on the radar gun. Certificates of accuracy for two tuning forks were admitted into evidence over appellant's objection. Huddleston testified that he had no knowledge about when the radar gun needed to be recalibrated. After being shown the manufacturer's user manual for the radar device, he acknowledged that there was a recommendation that the device be tested for measurement accuracy every three years and whenever the device undergoes repair. Huddleston testified that the radar gun had a power cord repaired around June 9, 2010. Noting that the radar gun had a plus or minus one mph differential, Huddleston acknowledged that appellant may have been going faster or slower than 51 mph.

At the close of the State's case, appellant moved for a directed verdict. She argued that the officer visually estimated her speed at 50 mph, that the radar gun had a one mph plus or minus differential, and that the radar gun was not properly certified. The motion was denied.

Appellant called several Jacksonville police officers to testify on her behalf. Lieutenant Arthur Kaufman testified that he was in charge of having radar devices sent in for repair when they malfunctioned, but that the repair center decided when to have the devices recertified. Chief Gary Sipes testified that he would want to follow the manufacturer's recommendations on recalibration and recertification. Captain Kenny Boyd, the captain over the patrol division, testified that the police department did not have a specific policy for recertifying

radar devices in a specific time frame, but that it would be reasonable to follow a manufacturer's recommendation of every three years.

Alvin Berndt, a standards specialist from the Commission on Law Enforcement Standards and Training (CLEST), testified next. Berndt testified that he did not believe the procedure by which Huddleston was certified as a radar operator was contrary to CLEST's rules. Berndt stated that, although Huddleston completed the radar training course prior to completing basic law-enforcement training, he was not certified as a radar operator until February 2010, after completion of both courses.

At the conclusion of all of the evidence, appellant renewed her motion for a directed verdict. The motion was denied, and the jury found appellant guilty of driving more than 15 mph over the speed limit. Appellant filed a timely notice of appeal.

Appellant challenges the sufficiency of the evidence to support her conviction, arguing that weight should be given to Huddleston's visual estimation of her speed at only 50 mph; that the radar gun and tuning forks were not properly certified in compliance with specifications; that Huddleston was not properly certified as a radar operator; and that even if the radar gun was properly calibrated, she may have been driving 50 mph instead of 51 mph. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *White v. State*, 73 Ark. App. 264, 42 S.W.3d 584 (2001). The test for such motions is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* On appeal, we review the evidence in

the light most favorable to the appellee and consider only the evidence that supports the verdict. *Id.* Arkansas Code Annotated section 27-51-201(c) (Repl. 2010) provides in part that "the limits specified in this section or established as authorized shall be maximum lawful speeds." Section 27-50-302(a)(7) (Repl. 2010) provides that speeding in excess of fifteen miles per hour over the posted speed limit is a Class C misdemeanor.

Appellant argues that Officer Huddleston conceded that even a properly calibrated radar device is only accurate within plus or minus one mph, and the manufacturer's certification confirmed this. Appellant argues that to obtain a conviction, the State asked the jury to assume that the radar measured her exact speed or that it measured her speed one mph too slow. The State cites *Everight v. City of Little Rock*, 230 Ark. 695, 326 S.W.2d 796 (1959), in arguing that radar-detected speed is substantial evidence of speeding provided there is proof of the accuracy of the equipment used to verify the speed. The State argues that Huddleston's testimony provided substantial proof that the radar equipment was properly operated and accurately calibrated. *Everight* involved the admissibility of evidence of speed as indicated by radar equipment. Our supreme court held that for evidence of radar-detected speed to be admissible, it is "necessary to prove the accuracy of the particular equipment used in testing the speed." *Everight, supra.*

We hold that even if the radar device was properly certified as to its accuracy and operated by a properly certified radar operator, there was insufficient evidence to compel a conclusion beyond speculation and conjecture that appellant was driving 51 mph instead of 50 mph. Whether evidence is direct or circumstantial, it must meet the requirement of

substantiality; that is, it must force the fact-finder to reach a conclusion one way or the other without resorting to speculation or conjecture. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003). Two equally reasonable conclusions as to what occurred raise only a suspicion of guilt, and on appeal, we may consider whether the record, viewed in the light most favorable to the State, presented this situation and required the fact-finder to speculate to convict the defendant. *Turner v. State*, 103 Ark. App. 248, 288 S.W.3d 669 (2008). Here, the radar gun measured appellant's speed at 51 mph, but the evidence showed that even a properly calibrated radar gun could measure speed only within plus or minus one mph. The jury was presented with equally reasonable conclusions that appellant was driving 50 mph, 51 mph, or 52 mph. Thus, the jury was forced to speculate that appellant was driving in excess of 15 mph over the speed limit. As there was insufficient evidence to support her conviction, we reverse and dismiss.

Reversed and dismissed.

PITTMAN and GRUBER, JJ., agree.

MANDATE
REVERSED AND DISMISSED

Proceedings of September 19, 2012.

CACR11-1137
PARTNE KIESLING DAUGHERTY APPELLANT

V. Appeal from Pulaski Circuit, Seventh Division
(CR-10-3498)

STATE OF ARKANSAS APPELLEE

This case was submitted to the Arkansas Court of Appeals on the record of the Circuit Court of Pulaski County and briefs of the respective parties. After due consideration, it is the decision of the Court that the case be reversed and dismissed for the reasons set out in the attached opinion.

Pittman and Gruber, JJ., agree.

In testimony, that the above is a true copy of the judgment of the Court of Appeals. I, Leslie Steen, Clerk, set my hand and affix the seal, this 10th day of October, 2012.

Leslie M. Steen Renee Hurndon, D.C.
Clerk

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY **CLAIMANT**

V. **NO. 14-0299-CC**

STATE OF ARKANSAS & AR CLEST **RESPONDENTS**

MOTION TO DISMISS CLAIMANT'S COMPLAINT

Respondents, State of Arkansas and The Arkansas Commission on Law Enforcement Standards and Training (collectively "State"), by and through their attorneys, Attorney General Dustin McDaniel and Assistant Attorney General Jonathan Q. Warren, respectfully offer the following:

1. The State respectfully asserts that it is entitled to judgment as a matter of law and Claimant's Complaint is subject to dismissal for the reasons that follow.
2. Claimant, Partne Kiesling-Daugherty, filed her Complaint on October 10, 2013, alleging that she (1) was illegally cited for speeding on June 24, 2010, and as a result, (2) was maliciously prosecuted and wrongfully convicted because the Arkansas Court of Appeals reversed and dismissed her conviction, finding that there was insufficient evidence to support her conviction.
3. Claimant also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is somehow responsible because it "issued [the citing officer] an invalid radar certification without ensuring that [he] met the statutory qualifications…for radar operation certification[.]"

4. There are no facts that would entitle Claimant to recover from the State in this matter, and therefore, Claimant's Complaint should be dismissed.

5. First, Claimant's malicious-prosecution claim fails as a matter of law because Arkansas cases have long and consistently held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *Sundeen v. Kroger*, 355 Ark. 138 (2003)(emphasis added).

6. Second, Claimant's false-arrest claim is barred by the applicable statute of limitations, which ended on June 24, 2013. *See Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001)(holding that Ark. Code Ann. § 16-56-105(3) and its three-year limitations period for personal injury applicable to § 1983 cases filed in Arkansas).

7. Third, in addition to the false-arrest claim being barred by the statute of limitations, such claim fails as a matter of law because probable cause for an arrest defeats a civil action for false arrest in connection with a misdemeanor. *Mendenhall v. Skaggs Companies, Inc.*, 285 Ark. 236, 685 S.W.2d 805 (1985).

8. Fourth, Claimant's claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion) because she is attempting to relitigate the same issue that she presented before the Arkansas Court of Appeals.

9. Fifth, Claimant has failed to state a claim against CLEST upon which any relief can be granted, and therefore such claim should be dismissed pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

10. Sixth, because the prosecuting attorney was acting at all times in his role as a prosecutor, Larry Jegley, the elected prosecutor for the Sixth Judicial District (Pulaski and Perry

Counties), is entitled to prosecutorial immunity, which is an absolute bar to any claim against him.

11. In support of its Motion to Dismiss, the State relies upon the Brief in Support being filed contemporaneously herewith.

WHEREFORE, Respondents request that the Claims Commission dismiss Claimant's Complaint in its entirety, judgment be entered in favor of Respondents, and for all other just and appropriate relief.

Respectfully submitted,

DUSTIN McDANIEL,
Attorney General

By: _____ AAG

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CERTIFICATE OF SERVICE

I, Jonathan Q. Warren, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been served by placing a copy of same in the U.S. Mail, on November 12, 2013, addressed to the following:

Ms. Partne Kiesling-Daugherty
805 Foxwood
Jacksonville, AR 72076

AAG

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BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY **CLAIMANT**

V. **NO. 14-0299-CC**

STATE OF ARKANSAS & AR CLEST **RESPONDENTS**

BRIEF IN SUPPORT OF STATE'S MOTION TO DISMISS

Respondents, State of Arkansas and The Arkansas Commission on Law Enforcement Standards and Training (collectively "State"), respectfully offer the following Brief in Support of their Motion to Dismiss the Complaint filed by Claimant Partne Kiesling-Daugherty.

INTRODUCTION

Claimant, Partne Kiesling-Daugherty, filed her Complaint on October 10, 2013, alleging that she (1) was illegally cited for speeding on June 24, 2010, and as a result, (2) was maliciously prosecuted and wrongfully convicted because the Arkansas Court of Appeals reversed and dismissed her conviction, finding that there was insufficient evidence to support her conviction. She also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is somehow responsible because it issued the citing officer an invalid radar certification without ensuring that the citing officer met the statutory qualification for radar operation certification.

For the reasons that follow, Claimant's claims fail as a matter of law because (1) in a malicious-prosecution claim, Arkansas cases have long-held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed, (2) her false-arrest claim is barred by the applicable statute

of limitations, which ended on June 24, 2013, (3) her false-arrest claim fails because probable cause for an arrest defeats an action for false arrest, (4) her claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion), (5) she has failed to state a claim against CLEST upon which any relief can be granted, and (6) Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which is an absolute bar to any claim against him.

DISMISSAL STANDARD

On a motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(6), the courts treat the facts alleged in the complaint as if they were true and view them in the light most favorable to the plaintiffs. *Dockery v. Morgan*, 2011 Ark. 94, 6-7, 380 S.W.3d 377 (citing *McNeil v. Weiss,* 2011 Ark. 46, 378 S.W.3d 133). "However, our rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* (Citing Ark. R. Civ. P. 8(a)(1); *Born v. Hosto & Buchan*, PLLC, 2010 Ark 292, 372 S.W.3d 324). The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.* (Citing *Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

ARGUMENT

a. Claimant's malicious-prosecution claim fails as a matter of law because there is conclusive evidence of the existence of probable cause.

Claimant alleges that the State, via its prosecutors, maliciously prosecuted her for speeding in excess of 15 miles per hour over the speed limit. Her claim fails as a matter of law because there is conclusive evidence of the existence of probable cause.

In order to establish a claim for malicious prosecution, Claimant must prove the following five elements: (1) a proceeding instituted or continued by the defendant against the

plaintiff; (2) termination of the proceeding in favor of Claimant; (3) absence of probable cause for the proceeding; (4) malice on the part of the defendant; and (5) damages. *Sundeen v. Kroger*, 355 Ark. 138 (2003)(quoting *South Arkansas Petroleum Co. v. Schiesser*, 343 Ark. 492, S.W.3d 317 (2001); *McLaughlin v. Cox*, 324 Ark. 361, 922 S.W.2d 327 (1996)). In this case, Claimant cannot establish the third element, nor can she establish the fourth element. Thus, her claim fails as a matter of law.

Arkansas courts have long and consistently held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955)(emphasis added).

Here, it is undisputed that Claimant was convicted of speeding in excess of 15 miles per hour over the speed limit. In fact, she submitted a copy of her Judgment and Disposition Order filed in the Pulaski County Circuit Clerk's Office as an exhibit to her Complaint. The Judgment and Disposition Order confirms that (1) the offense date was June 24, 2010; (2) she was found guilty at a jury trial; and (3) she was sentenced by a jury. These facts are also undisputed by the State. As detailed in the Arkansas Court of Appeals opinion, also submitted as an exhibit to her Complaint, she was fined in district court, and appealed to Pulaski County Circuit Court, where a jury trial was held.

It is true that one convicted in district court is entitled to have that conviction reviewed de novo in circuit court. *Sundeen*, 355 Ark. at 145. In this case, it is undisputed that Claimant received that de novo review in circuit court, when she appealed her district-court conviction to circuit court. She exercised her constitutional right to have her misdemeanor-speeding case heard in front of a jury, and a jury found her guilty and imposed her sentence. The fact that her

case was later reversed does not negate well-established Arkansas law establishing that her conviction at trial serves as conclusive evidence of the existence of probable cause for the initiation of a criminal proceeding against her. Stated again, a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955). There is no question that the Pulaski County Circuit Court has the jurisdiction to hear an appeal from Jacksonville district court. *See* Rule 36(a) of the Arkansas Rules of Criminal Procedure[1]. There is also no question that Claimant was convicted at a trial by jury, and documentation submitted as an exhibit to her Complaint leaves no doubt as to this fact (as well as the Arkansas Court of Appeals opinion, also submitted as an exhibit to her Complaint). Without the lack of probable cause, she is unable to establish all of the elements necessary to establish a malicious-prosecution claim. Thus, her claim fails as a matter of law.

Taken a step further, in addition to Claimant being unable to establish the third element of her malicious-prosecution claim, she also cannot establish the fourth element, which is malice on the part of the State. Malice has been defined as "any improper or sinister motive for instituting the suit." *Cordes v. Outdoor Living Center*, 301 Ark. 26, 32, 781 S.W.2d 31, 31 (1989)(citing *Foster v. Pitts*, 63 Ark. 387, 38 S.W. 1114 (1897). However, when probable cause exists and there is no strong evidence of malice, a charge of malicious prosecution cannot succeed. *Id.* Here, as stated above, there was probable cause for the initiation of proceedings against her as evidenced by her conviction in Pulaski County Circuit Court at a trial by jury. Thus, she cannot establish malice and her claim fails as a matter of law. As a result, her

[1] A person convicted of a criminal offense in a district court, including a person convicted upon a plea of guilty, may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred.

malicious-prosecution claim should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

b. <u>Claimant's false-arrest claim is barred by the applicable statute of limitations which ran on June 24, 2013.</u>

Claimant alleges that on June 24, 2010, she was illegally cited for speeding in excess of 15 miles per hour over the speed limit. Her claim is barred by the applicable statute of limitations, which ended on June 24, 2013.

In constitutional claims filed under 42 U.S.C. § 1983 for false-arrest in Arkansas, such claims are subject to a three-year statute of limitations. *See Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001)(holding that Ark. Code Ann. § 16-56-105(3) and its three-year limitations period for personal injury applicable to § 1983 cases filed in Arkansas). Likewise, Arkansas's three-year statute of limitations for personal injury applies in this case.

Claimant filed her Complaint at the Commission on October 10, 2013, which is more than three years after she received her citation for speeding on June 24, 2010. There is no dispute that June 24, 2010 is the applicable date in which the limitations period began to run. She listed June 24, 2010 in her Complaint, June 24, 2010 is listed in the Judgment and Disposition Order as the date of offense, and June 24, 2010 is listed in the Arkansas Court of Appeals opinion where her conviction was reversed and dismissed.

Because she failed to file her false-arrest claim on or before June 24, 2013, her claim is barred by the applicable statute of limitations. She filed her Complaint well-over three months after the applicable period of limitations expired. Accordingly, her false-arrest claim should be dismissed as a matter of law. *See* Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall

make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

c. <u>In addition to Claimant's false-arrest claim being barred by the statute of limitations, such claim fails as a matter of law.</u>

Claimant alleges that on June 24, 2010, she was illegally cited for speeding in excess of 15 miles per hour over the speed limit. For the reasons stated above, her claim is barred by the applicable statute of limitations, which expired on June 24, 2013. Although her false-arrest claim is barred by the statute of limitations, such claim also fails because as a matter of law, probable cause for an arrest defeats an action for false arrest.

False arrest, or false imprisonment, has been defined by the Arkansas Supreme Court as "the unlawful violation of the personal liberty of another, consisting of detention without sufficient legal authority." *Grandjean v. Grandjean*, 315 Ark. 620, 869 S.W.2d 709 (1994)(citing *Headrick v. Wal-Mart Stores, Inc.*, 293 Ark. 433, 738 S.W.2d 418 (1987); *Moon v. The Sperry & Hutchinson Co.*, 250 Ark. 453, 465 S.W.2d 330 (1971)). Probable cause is a defense to a civil action for false arrest or false imprisonment in connection with a misdemeanor. *Mendenhall v. Skaggs Companies, Inc.*, 285 Ark. 236, 685 S.W.2d 805 (1985).

In this case, for all of the reasons explained above regarding her malicious-prosecution claim, Arkansas law has long-established that her conviction at trial serves as <u>conclusive evidence</u> of the existence of probable cause for the initiation of a criminal proceeding against her (emphasis added). A judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955). Accordingly, as a matter of Arkansas law there clearly was probable cause for the arrest and prosecution of Ms. Daugherty. Additionally, she is thus unable to

establish one of the essential elements of a claim of false arrest. Having failed to make out a false-arrest claim as a matter of law, her Complaint should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

d. Claimant's claim against CLEST barred by the doctrine of collateral estoppel (issue preclusion).

In addition to allegations of false-arrest and malicious-prosecution, Claimant also alleges that The Arkansas Commission on Law Enforcement Standards and Training (CLEST) is in some way responsible because it issued the citing officer an invalid radar certification without ensuring that the citing officer met the statutory qualification for radar operation certification. Specifically, she argues that the citing officer lacked the necessary hours of CLEST training for officer certification to be eligible to enroll in the radar operator course.

Collateral estoppel, or issue preclusion, bars relitigation of issues of law or fact previously litigated, provided that the party against whom the earlier decision is being asserted had full and fair opportunity to litigate the issue in question and that the issue was essential to the judgment. *Deer/Mt. Judea School District v. Kimbrell*, 2013 Ark. 393, 2013 WL 5571202 (Oct. 10, 2013)(citing *Morgan v. Turner*, 2010 Ark. 245, 368 S.W.3d 888)). To apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the judgment. *Id.*

In this case, it is not disputed that Claimant's conviction was reversed and dismissed by the Arkansas Court of Appeals. Because her case was appealed to the Arkansas Court of

Appeals and an opinion was issued, there is no question that she had a full and fair opportunity to litigate this issue. In her appeal, she challenged the sufficiency of the evidence to support her conviction, including the argument that the citing officer was not properly certified as a radar operator. *See Daugherty v. State*, 2012 Ark. App. 512 (Sept. 19, 2012)(unpublished opinion – submitted as an exhibit to Claimant's Complaint). In the Court of Appeals case, it was noted that:

> Alvin Berndt, a standards specialist from the Commission on Law Enforcement Standards and Training (CLEST), testified next. Berndt testified that he did not believe the procedure by which [the citing officer] was certified as a radar operator was contrary to CLEST's rules. Berndt stated that, although [the citing officer] completed the radar training course prior to completing basic-law enforcement training, he was not certified as a radar operator until February 2010, after completion of both courses.

Id. at 3.

The Arkansas Court of Appeals held that "even if the radar device was properly certified as to its accuracy and operated by a properly certified radar operator, there was insufficient evidence to [support her conviction]. *Id.* at 4. The Court of Appeals did not state that (1) there was an invalid radar certification, (2) that the citing officer lacked the necessary hours of CLEST training for officer certification to be eligible to enroll in the radar operator course, or (3) that CLEST engaged or engages in any misconduct or patter of misconduct. There is also nothing in the opinion to indicate that her rights were violated in any way or that she should be compensated in any way. Taking into account the record before it, including the testimony from Berndt as detailed-above, the Court of Appeals merely found that there was not sufficient evidence to support her conviction because "the jury was forced to speculate that appellant was driving in excess of 15 mph over the speed limit." *Id.* at 5. As a result, her case was properly reversed and dismissed. It is clear that Claimant is attempting to relitigate the same issue that

she presented before the Arkansas Court of Appeals. It is also clear that the same issue was considered by the Court of Appeals in its opinion, as evidenced by the above-quoted language. As such, collateral estoppel bars her from relitigating this issue. Again, to apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation, (2) the issue must have been actually litigated, (3) the issue must have been determined by a valid and final judgment, and (4) the determination must have been essential to the judgment. *Deer/Mt. Judea School District v. Kimbrell*, 2013 Ark. 393, 2013 WL 5571202 (Oct. 10, 2013)

Applying the elements in this case, it is clear that (1) as explained above, the issue sought to be precluded is the same as in the prior litigation, which is the issue of whether the citing officer was properly certified as a radar operator, (2) the issue was actually litigated, as she prevailed in the appeal and her conviction was reversed and dismissed, (3) the issue was determined by a valid and final judgment, as she prevailed in her appeal and her conviction was reversed and dismissed (mandate filed October 12, 2012 - submitted as an exhibit to Claimant's Complaint), and (4) the determination was essential to the judgment, as demonstrated by the above-quoted language from the Court of Appeals opinion.

In this case, Claimant is attempting to relitigate the issue of whether the citing officer was properly certified as a radar operator. She is now seeking to hold CLEST responsible for (1) her allegations against the citing officer, (2) her speeding citation, (3) her district court conviction (which was appealed and received a de novo review), and (4) her conviction in a trial by jury, which was ultimately reversed and dismissed. She is barred from relitigating the same issue that was presented and considered by the Court of Appeals.

Accordingly, her claim against CLEST should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

e. Claimant has failed to state a claim against CLEST upon which any relief can be granted.

Claimant's claim against CLEST is subject to dismissal because she has also failed to state a claim against CLEST upon which any relief can be granted.

For all of the reasons previously explained in the preceding subsection, she has failed to state a claim against CLEST upon which any relief can be granted. Her claim is no more than a conclusion based upon pure speculation regarding an issue previously considered by the Arkansas Court of Appeals, which is whether the citing officer was properly certified as a radar operator. She also alleges, in conclusory fashion, that "CLEST has compounded this problem by illegally sanctioning this practice and appointing unqualified persons as police radar operators before the minimum standards for training requirements have been completed[.]" Even treating the facts alleged in the complaint that CLEST is engaging in an illegal practice as true, the proper remedy, as she even cites in her Complaint, is that "[a] police traffic radar operator who does not meet the standards and qualifications [required] shall not take any official action as a police traffic radar operator and any action taken shall be held as invalid (emphasis added). *See* Ark. Code Ann. § 12-9-404. Politely, the proper remedy is not to allow Claimant to recover at the Arkansas Claims Commission based upon guesswork regarding an issue that has already been litigated and considered by an appellate court.

As explained above in the dismissal-standard section on Page 2 of this brief, Arkansas courts require fact pleading, and a complaint must state facts, not mere conclusions, in order to

entitle the pleader to relief. She has not plead any facts to entitle her to any relief. Thus, her claim against CLEST fails and should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

f. Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which bars any claim against him.

Claimant alleges that "[a]s a result of prosecutorial misconduct by the State's Prosecutors under elected-Prosecutor Larry Jegley, I was wrongfully convicted of [speeding in excess of 15 miles per hour over the speed limit.]" As stated above, her malicious-prosecution claim fails as a matter of law because a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed. *See Smith v. Anderson*, 259 Ark. 310, 532 S.W.2d 745 (1976); *Alexander v. Laman*, 225 Ark. 498, 283 S.W.2d 345 (1955)(emphasis added). Taken a step further, any claim against Larry Jegley, the elected prosecutor for the Sixth Judicial District, is barred because he is entitled to prosecutorial immunity.

Because the Prosecuting Attorney was acting at all times in his role as a prosecutor, he is afforded prosecutorial immunity under well-established law. Absolute prosecutorial immunity is separate and distinct from the sovereign immunity granted to the State of Arkansas. Prosecutorial immunity is an ancient common-law doctrine designed to permit the prosecuting authorities to carry out their official duties, without being deterred by lawsuits and threats of lawsuits. Sovereign immunity, on the other hand, protects the fiscal resources of the State from being attacked without the permission of the State itself. In Arkansas, the General Assembly, on behalf of the State, has established the Claims Commission as an alternative forum for cases that are barred from court by sovereign immunity – allowing the State's fiscal resources to be tapped

to pay appropriate claims as determined by the Commission and approved by the General Assembly.

The General Assembly has made clear, in plain statutory language, that the Claims Commission will not consider claims or make awards where the claim would be barred in a court for reasons other than sovereign immunity, e.g. the statute of limitations has passed, the claimant has no standing to assert the claim, or the claim is barred by some other rule of law, such as the absolute immunity afforded to prosecutors and judges for actions they take within the scope of their official duties. *See* Ark. Code Ann. § 19-10-204(b)(3)(B) ("if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction [for any reason other than sovereign immunity], then the commission shall make no award on the claim.").

The law is quite clear that when a prosecuting attorney is acting within the scope of his quasi-judicial duties, he is absolutely immune from suit. In *Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984 (1976), the United States Supreme Court held that a prosecuting attorney is entitled to absolute immunity for activities which are "intimately associated with the judicial phase of the criminal process . . . functions to which the reasons for absolute immunity apply with full force." *Id.* at 430, 96 S.Ct. at 994. Additionally, the Court has opined that

> §1983 was not meant to "abolish all common law immunities". . . [this] section is to be read "in harmony with the general principles of tort immunities and defenses rather than derogation of them". . . [i]t is "better to leave unredressed the wrongs done by dishonest officers than subject those who try to do their duty to the constant dread of retaliation."

Burns v. Reed, 500 U.S. 478, 484, 111 S.Ct. 193 (1991) (quoting *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213 (1967) and *Imbler v. Pachtman*, *supra*).

The Arkansas Supreme Court has established and ruled that, by its own precedents, as well as those of the United States Supreme Court, prosecutorial immunity is absolute. In *Culpepper v. Smith*, 302 Ark. 558 (1990), the Arkansas Supreme Court stated that

> It has long been held that public policy demands such immunity for the prosecutors and has permitted no diminution or erosion of this defense when the acts complained of are committed within the scope of the duties of the prosecuting attorney's office. Decisions to this effect are myriad.

Id. at 571 (emphasis added).

The most basic application of prosecutorial immunity is for a prosecutor's actions taken in the preparation and filing of criminal charges against a defendant. *See Kalina v. Fletcher*, 522 U.S. 118, 129 (1997). With regard to Claimant's Complaint, Larry Jegley is entitled to prosecutorial immunity. There is absolutely no question that the prosecution of her case falls within the scope of Mr. Jegley's duties. There is absolutely no evidence of any conduct that falls outside of the traditional prosecutorial functions and, indeed, no allegations of any actions outside of Mr. Jegley's jurisdiction as a prosecutor. Once more, the Arkansas Court of Appeals reversed and dismissed her case on the basis of insufficient evidence to support her conviction. In reviewing the record before it, there is nothing in the Court of Appeals opinion to indicate any wrongdoing of any kind on behalf of Mr. Jegley or the deputy prosecutors who were involved in the jury trial, as she alleged in her Complaint (that exculpatory evidence was withheld and perjury elicited from Alvin Berndt)(emphasis added).[2] There is absolutely no question that prosecuting any crime at a trial by jury is a role that falls within the traditional prosecutorial function. Because Mr. Jegley was engaged in conduct connected to his role as a prosecutor in the judicial process, absolute immunity attaches under well-established law.

---

[2] Deputy prosecuting attorneys are clothed with the power of the Prosecuting Attorney and act in the name of the Prosecuting Attorney. *See Owen v. State*, 263 Ark. 493, 565 S.W.2d 607 (1978)

Accordingly, her claim against the State via Larry Jegley should be dismissed pursuant to Ark. Code Ann. § 19-10-204(b)(3)(A)(the commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity).

CONCLUSION

Claimant is not entitled to compensation from the State of Arkansas for her procedural victory on appeal in this case. There is no Arkansas law providing for a monetary award to a criminal defendant simply because a criminal proceeding is reversed and dismissed on appeal. The implications of such an award would extend far beyond this case.

In sum, her claims fail as a matter of law because (1) in a malicious-prosecution claim, Arkansas cases have long-held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though the judgment is later reversed, (2) her false-arrest claim is barred by the applicable statute of limitations, which ended on June 24, 2013, (3) her false-arrest claim fails because probable cause for an arrest defeats an action for false arrest, (4) her claim against CLEST is barred by the doctrine of collateral estoppel (issue preclusion), (5) she has failed to state a claim against CLEST upon which any relief can be granted, and (6) Larry Jegley, the elected prosecutor for the Sixth Judicial District, is entitled to prosecutorial immunity, which is an absolute bar to any claim against him.

WHEREFORE, Respondents request that the Claims Commission dismiss Claimant's Complaint in its entirety, judgment be entered in favor of Respondents, and for all other just and appropriate relief.

Respectfully submitted,

DUSTIN McDANIEL,
Attorney General

By: _____ AAG

Jonathan Q. Warren
Arkansas Bar No. 2006043
Assistant Attorney General
Attorney for State of Arkansas
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3658
Fax: (501) 682.2591
jonathan.warren@arkansasag.gov

CERTIFICATE OF SERVICE

I, Jonathan Q. Warren, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been served by placing a copy of same in the U.S. Mail, on November 12, addressed to the following:

Ms. Partne Kiesling-Daugherty
805 Foxwood
Jacksonville, AR 72076

_____ AAG

Jonathan Q. Warren
Arkansas Bar No. 2006043
Assistant Attorney General
Attorney for State of Arkansas
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3658
Fax: (501) 682.2591
jonathan.warren@arkansasag.gov

BEFORE THE CLAIM COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY **CLAIMANT**	§	**NO. 14-0299-CC**
JOHN DAUGHERTY **CLAIMANT**	§	**NO. 14-0300-CC**
STANTON DAUGHERTY **CLAIMANT**	§	**NO. 14-0301-CC**
V.	§	
STATE OF ARKANSAS & AR CLEST	§	**RESPONDENTS**

CLAIMANT'S RESPONSE TO
STATE'S MOTION TO DISMISS

Claimant Partne Kiesling-Daugherty ("Claimant Partne"), John Daugherty, and Stanton Daugherty (collectively "Claimants"), *pro se,* and for their combined Responses to State's Motion to Dismiss, respectfully state:

1. Claimants respectfully assert that the Respondents are *not* entitled to judgment as a matter of law, and Respondents have made material misstatements of facts and misstatements of law to this Commission regarding Claimants' claims.

2. Claimant Partne Kiesling-Daugherty denies Paragraph 6 of Respondents' Motion to Dismiss. Arkansas cases have not "long and consistently held that a judgment of conviction by a court of competent jurisdiction is conclusive evidence of the existence of probable cause, even though judgment is later reversed." The cited cases are dissimilar to Claimant Partne Kiesling-Daugherty's case, as they involved municipal court misdemeanor convictions appealed to circuit court, in which the prosecutor *chose not to prosecute the case.* Thus, those prosecutors *nolle prose* the cases at circuit court level.

The State prosecutors are under no legal obligation to prosecute violations of *municipal ordinances and/or local traffic laws not defined by the Criminal Code.* Indeed, Arkansas Attorney General Dustin McDaniel issued Opinion No. 2013-096, stating that the State prosecutors were barred from prosecuting cases such as Claimant Partne.

A more thorough review of Arkansas case law will reflect that this issue has to be reviewed on a case-by-case basis. Claimants will file an amended brief providing supporting case law.

In regards to Claimant Partne Kiesling-Daugherty's circuit court case, the State's Prosecutors have prior animosity towards Claimant Partne and sought to teach her a lesson for questioning their authority and that of the police. The assigned prosecutor, Kathleen McDonald, did not want to pursue the case against Claimant Partne , but McDonald's supervisors ordered her to vigorously prosecute Claimant Partne. During the day-long jury trial, two prosecutors presented the State's case, while 3-7 prosecutors (quantity varied at different times) watched the spectacle from the courtroom benches.

3. The statutes of limitations have not tolled under *Heck v. Humphrey,* U.S. Supreme Court decision. Furthermore, equitable tolling has to be considered as well. Until Claimant Partne's conviction was reversed, she was unable to initiate a court action where success on its merits would imply the invalidity of the conviction itself.

4. Claimants plan to amend their response and to provide a more thorough brief. Claimants deny each and every allegation by Respondents.

5. Claimants request a hearing on their claims.

6. CLEST lacked jurisdiction to issue a radar operator certification to Huddleston, who lacked jurisdiction to operate a radar gun. The state prosecutors lacked jurisdiction to prosecute Claimant Partne Kiesling-Daugherty.

Wherefore, Claimants ask that a hearing be set.

Respectfully submitted,

Claimant Partne Kiesling-Daugherty
501-350-5679

Claimant Stanton Daugherty

Claimant John Daugherty

Certificate of Service

I certify that a copy of the foregoing was mailed and emailed on this date of **November 25, 2013**, to Respondents counsel: Jonathan Q. Warren, at 323 Center Street, Suite 200, Little Rock, AR 72201.

Claimant Partne Kiesling-Daugherty

Claimant Stanton Daugherty

Claimant John Daugherty

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 1,000,000.00

Claim No. 14-0299-CC

	Attorneys
Partne Kiesling-Daugherty **Claimant**	Pro se **Claimant**
vs.	
SOA/Comm. On Law Enforcement Standards **Respondent**	Jonathan Warren, Assistant Attorney General **Respondent**
State of Arkansas	

Date Filed October 10, 2013

Type of Claim Mental Anguish, Pain & Suffering, ~~Refund of Expenses & Loss Wages~~

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-8 and 10 and 11 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-8 and 10 and 11 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing December 13, 2013

Date of Disposition December 13+, 2013

Chairman

Commissioner

Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

BEFORE THE CLAIM COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY **PETITIONER**	§	**NO. 14-0299-CC**
JOHN DAUGHERTY **PETITIONER**	§	**NO. 14-0300-CC**
STANTON DAUGHERTY **PETITIONER**	§	**NO. 14-0301-CC**
V.	§	
STATE OF ARKANSAS & AR CLEST	§	**RESPONDENTS**

MOTION TO SET-ASIDE
ORDERS DATED 12/13/2013;

***SECOND* REQUEST FOR (RE)HEARING ON**
STATE'S MOTION TO DISMISS;

AND

REQUEST FOR HEARINGS & ORAL REPRESENTATION
ON *ALL* MOTIONS AND PROCEEDINGS

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Petitioners Partne Kiesling-Daugherty ("Petitioner Partne"), John Daugherty ("PetitionerJohn"), and Stanton Daugherty ("Petitioner Stanton"), (collectively referred to as "Petitioners"), *pro se,* and for their combined Motion, respectfully state:

1. Petitioners respectfully assert that the Arkansas Claims Commission erred as a matter of fact and law in rendering its Orders dismissing Petitioners' above claims. Petitioners' arguments are two-fold regarding their Motion to Set Aside.

2. First, Petitioners filed a written request for a hearing regarding Respondents' Motions to Dismiss, the Commission or someone overlooked, or, in the alternative, someone turned a blind-eye to Petitioners' request for a hearing on said motion. A simple review of the last sentence, [prior to their signatures] of Petitioners' Response to Respondents' Motion to Dismiss will support Petitioners' claim of errors in fact and law, which reads (*Digital Image Copied & Resized)*:

> Wherefore, Claimants ask that a hearing be set.

Respectfully submitted,

Claimant Partne Kiesling-Daugherty

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3. Pursuant to *Rule 78* of the *Arkansas Rules of Civil Procedures,* Petitioners are *entitled* to a hearing on Respondents' Motions to Dismiss.

4. Pursuant to *A.C.A. § 19-10-205*, the Commission can make, alter, or amend their rules, provided those rules and regulations do not exceed the jurisdiction imposed upon it by this subsection, to wit: "which shall not be inconsistent with any of the provisions of this subchapter or other laws."

19-10-205. Rules and regulations.

> The Arkansas State Claims Commission shall have the power to make and alter or amend all rules and regulations governing the procedure before it which may be deemed necessary and expedient for the orderly discharge of its duties and *which shall not be inconsistent with any of the provisions of this subchapter or other laws.*

5. Pursuant to *A.C.A. § 19-10-210(a)*, this Commission is *mandated* to notify Petitioners of *all* hearing scheduled of the time and place set for hearing thereof. This statute does *not* place the burden on the Petitioners to request "oral representation" at *any* hearing, including ones on pending motions, to wit:

19-10-210. Notice and hearings.

> **(a)** The Director of the Arkansas State Claims Commission *shall notify each claimant* and also the head of each state agency, department, or institution against which a claim is filed *of the time and place set for the hearing thereof.*
>
> **(b) (1)** In conducting hearings, the Arkansas State Claims Commission shall not be bound by the formal rules of evidence and *shall conduct all hearings publicly and in a fair and impartial manner, giving the parties full opportunity for presentation of evidence, cross-examination of witnesses,*

and argument.

***(2)** To the extent practicable, the commission shall adopt the procedure used by the circuit courts, and its hearing shall be conducted in a judicial manner.*

6. Pursuant to *A.C.A. § 19-10-210(b)(2)*, this Commission has chosen to adopt Rule 78 of Arkansas Rules of Civil Procedure and to require Petitioners to request a hearing, when the law has a statutory *mandate* that all Claimants be notified of hearings. The statutes do not differentiate Motions hearings from hearings on the merits of the Claims. As such, this Commissions reliance upon Rule 78 to conduct *ex parte* hearings without the Claimants being notified of said hearings is in *clear* violation of *A.C.A. § 19-10-210(a)*. Petitioners' statutory, procedural, and constitutional due process rights have been *clearly* violated. Without notification and the right to be heard in said proceedings, the Claims Commission would be nothing more than an unconstitutional Kangaroo Court, and the Arkansas Supreme Court's decision in *Fireman's Insurance Co., et al. v. Arkansas State Highway and Transportation Dept., 784 S.W.2d 771 (1990*), would be rendered void as a matter of law.

7. Pursuant to *A.C.A. §19-10-203*, Director Norman Hodges is responsible for notifying Petitioners of the times and dates for *all* hearings. In Petitioners' Claims, Director Hodges failed to do so.

8. Furthermore, Petitioners state that they have greater protections afforded to them under Article § 2 of the Arkansas Constitution. Under Article § 29 of the Arkansas Constitution, these rights shall forever remain inviolate, and that *all* laws contrary thereto, or to the other provisions contained within the Arkansas Constitution, shall be void. Thus, Peititioners are is entitled to their Constitutional right to a jury trial, due process, compensation for their losses and other claims, and that the Prosecutorial Immunity fails to supersede Petitioners' rights and claims under Article 2, *id.*

Wherefore, Petitioners ask that a hearing be set on this Motion, AND FOR ALL Requested relief, and all other relief deemed just and proper by this Commission.

Respectfully submitted,

(SIGNATURE ON ORIGINAL COPIES)

_____

Petitioner Partne Kiesling-Daugherty

(SIGNATURE ON ORIGINAL COPIES)

_____

Petitioner Stanton Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner John Daugherty

55

Certificate of Service

I certify that a copy of the foregoing was mailed and emailed on this date of **January 17, 2013**, to Respondents counsel: Jonathan Q. Warren, at 323 Center Street, Suite 200, Little Rock, AR 72201.

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner Partne Kiesling-Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner Stanton Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner John Daugherty

BEFORE THE CLAIM COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY	§	**NO. 14-0299-CC**
PETITIONER	§	
	§	
JOHN DAUGHERTY	§	**NO. 14-0300-CC**
PETITIONER	§	
	§	
STANTON DAUGHERTY	§	**NO. 14-0301-CC**
PETITIONER	§	
	§	
	§	
V.	§	
	§	
	§	
STATE OF ARKANSAS & AR CLEST	§	**RESPONDENTS**

MOTION TO SET-ASIDE
ORDERS DATED 12/13/2013;

***SECOND* REQUEST FOR (RE)HEARING ON**
STATE'S MOTION TO DISMISS;

AND

REQUEST FOR HEARINGS & ORAL REPRESENTATION
ON *ALL* MOTIONS AND PROCEEDINGS

57

Petitioners Partne Kiesling-Daugherty ("Petitioner Partne"), John Daugherty ("PetitionerJohn"), and Stanton Daugherty ("Petitioner Stanton"), (collectively referred to as "Petitioners"), *pro se,* and for their combined Motion, respectfully state:

1. Petitioners respectfully assert that the Arkansas Claims Commission erred as a matter of fact and law in rendering its Orders dismissing Petitioners' above claims. Petitioners' arguments are two-fold regarding their Motion to Set Aside.

2. First, Petitioners filed a written request for a hearing regarding Respondents' Motions to Dismiss, the Commission or someone overlooked, or, in the alternative, someone turned a blind-eye to Petitioners' request for a hearing on said motion. A simple review of the last sentence, [prior to their signatures] of Petitioners' Response to Respondents' Motion to Dismiss will support Petitioners' claim of errors in fact and law, which reads (*Digital Image Copied & Resized)*:

> Wherefore, Claimants ask that a hearing be set.

Respectfully submitted,

Claimant Partne Kiesling-Daugherty

3. Pursuant to *Rule 78* of the *Arkansas Rules of Civil Procedures,* Petitioners are *entitled* to a hearing on Respondents' Motions to Dismiss.

4. Pursuant to *A.C.A. § 19-10-205*, the Commission can make, alter, or amend their rules, provided those rules and regulations do not exceed the jurisdiction imposed upon it by this subsection, to wit: "which shall not be inconsistent with any of the provisions of this subchapter or other laws."

> **19-10-205. Rules and regulations.**
>
> The Arkansas State Claims Commission shall have the power to make and alter or amend all rules and regulations governing the procedure before it which may be deemed necessary and expedient for the orderly discharge of its duties and *which shall not be inconsistent with any of the provisions of this subchapter or other laws.*

5. Pursuant to *A.C.A. § 19-10-210(a)*, this Commission is *mandated* to notify Petitioners of *all* hearing scheduled of the time and place set for hearing thereof. This statute does *not* place the burden on the Petitioners to request "oral representation" at *any* hearing, including ones on pending motions, to wit:

> **19-10-210. Notice and hearings.**
>
> **(a)** The Director of the Arkansas State Claims Commission *shall notify each claimant* and also the head of each state agency, department, or institution against which a claim is filed *of the time and place set for the hearing thereof.*
>
> **(b) (1)** In conducting hearings, the Arkansas State Claims Commission shall not be bound by the formal rules of evidence and *shall conduct all hearings publicly and in a fair and impartial manner, giving the parties full opportunity for presentation of evidence, cross-examination of witnesses,*

and argument.

(2) *To the extent practicable, the commission shall adopt the procedure used by the circuit courts, and its hearing shall be conducted in a judicial manner.*

6. Pursuant to *A.C.A. § 19-10-210(b)(2)*, this Commission has chosen to adopt Rule 78 of Arkansas Rules of Civil Procedure and to require Petitioners to request a hearing, when the law has a statutory *mandate* that all Claimants be notified of hearings. The statutes do not differentiate Motions hearings from hearings on the merits of the Claims. As such, this Commissions reliance upon Rule 78 to conduct *ex parte* hearings without the Claimants being notified of said hearings is in *clear* violation of *A.C.A. § 19-10-210(a)*. Petitioners' statutory, procedural, and constitutional due process rights have been *clearly* violated. Without notification and the right to be heard in said proceedings, the Claims Commission would be nothing more than an unconstitutional Kangaroo Court, and the Arkansas Supreme Court's decision in *Fireman's Insurance Co., et al. v. Arkansas State Highway and Transportation Dept., 784 S.W.2d 771 (1990)*, would be rendered void as a matter of law.

7. Pursuant to *A.C.A. §19-10-203*, Director Norman Hodges is responsible for notifying Petitioners of the times and dates for *all* hearings. In Petitioners' Claims, Director Hodges failed to do so.

8. Furthermore, Petitioners state that they have greater protections afforded to them under Article § 2 of the Arkansas Constitution. Under Article § 29 of the Arkansas Constitution, these rights shall forever remain inviolate, and that *all* laws contrary thereto, or to the other provisions contained within the Arkansas Constitution, shall be void. Thus, Peititioners are is entitled to their Constitutional right to a jury trial, due process, compensation for their losses and other claims, and that the Prosecutorial Immunity fails to supersede Petitioners' rights and claims under Article 2, *id.*

Wherefore, Petitioners ask that a hearing be set on this Motion, AND FOR ALL Requested relief, and all other relief deemed just and proper by this Commission.

Respectfully submitted,

(SIGNATURE ON ORIGINAL COPIES)

_____

Petitioner Partne Kiesling-Daugherty

(SIGNATURE ON ORIGINAL COPIES)

_____

Petitioner Stanton Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner John Daugherty

Certificate of Service

I certify that a copy of the foregoing was mailed and emailed on this date of **January 17, 2013**, to Respondents counsel: Jonathan Q. Warren, at 323 Center Street, Suite 200, Little Rock, AR 72201.

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner Partne Kiesling-Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner Stanton Daugherty

(SIGNATURES ON ORIGINAL COPIES)

_____

Petitioner John Daugherty

62

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim $ 1,000,000.00 **Claim No.** 14-0299-CC

	Attorneys	
Partne Kiesling-Daugherty **Claimant**	Pro se	**Claimant**
vs.		
SOA/Comm. On Law Enforcement Standards **Respondent**	Jonathan Warren, Assistant Attorney General	**Respondent**

State of Arkansas

Date Filed October 10, 2013 **Type of Claim** Mental Anguish, Pain & Suffering, Refund of Expenses & Loss Wages

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's December 13, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's December 13, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

Date of Hearing February 13, 2014

Date of Disposition February 13, 2014

Chairman

Commissioner

Commissioner

63

***Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.*

BEFORE THE CLAIM COMMISSION
OF THE STATE OF ARKANSAS

PARTNE KIESLING-DAUGHERTY	§	**NO. 14-0299-CC**
PETITIONER	§	
	§	
V.	§	
	§	
STATE OF ARKANSAS & AR CLEST	§	**RESPONDENTS**

NOTICE OF APPEAL

Comes now, Petitioner Partne Kiesling-Daugherty and she gives his Notice of Appeal to the Commission's Order dated on or about December 13, 2013, and all other Orders, Decisions, and Actions of the Commission, in this Case and for Oral Representation at ALL proceedings.

Respectfully submitted,

(SIGNATURES ON ORIGINAL COPIES)

Petitioner Partne Kiesling-Daugherty

Certificate of Service

I certify that a copy of the foregoing was mailed and emailed on this date of **January 17, 2013**, to Respondents counsel: Jonathan Q. Warren, at 323 Center Street, Suite 200, Little Rock, AR 72201.

(SIGNATURES ON ORIGINAL COPIES)

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Petitioner Partne Kiesling-Daugherty