

Please print in ink or type

AUG 17 2023

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Joshua Stockton (ADC [REDACTED]), Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____
Date Filed _____
(Month) (Day) (Year)
Amount of Claim \$ _____
Fund _____

COMPLAINT

Joshua Stockton (ADC [REDACTED]), the above named Claimant, of [REDACTED] (City)
(Name) (Street or R.F.D. & No.)
County of [REDACTED] represented by Prose (self)
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of [REDACTED] (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas Department of Corrections (Division) Amount sought: \$8,500.00

Month, day, year and place of incident or service: 06/23/2023 Policy / duty violation against plaintiff due
Explanation: STATE employee Andrea Culclager Did not do A proper investigation that was
owed to the claimant redress due to his conditions of confinement issue brought to her office
Claimant clearly notified her office of state contractors going against their own policy /
practices as evidence (3-4) show in (3)-Policy and (4) kirk reply from wellpath employee
Mrs. Holmes at [REDACTED] on kirk request. Arkansas Code 04.03.1 - 835 as well as
Arkansas Code 12-22-103 cover the Duties and Policies vested by the state to A.D.C. Officers
which protect inmates redress attempts for conditions relating to their confinement and to the
Care or violations of that care. Claimant was used by the states contractor access every
30 days to his own medical records. Access was interfered with, prolonging the time period of
every 30 days due to contractors requiring a court order (evidence #4) which goes against
wellpath (No. 800 (Evidence 3) Policy), (Evidence #2 - "If you have Court ordered privileges we have
to have proof" is grievance response to Grievance # [REDACTED] 23-00129 is in direct conflict to No. 800 -
Policy which states, "(e.) except in cases where an inmate review of medical records is for
Pending litigation (see paragraph 3), The medical record review will be limited to a Single
Session not to exceed 1 hour in duration. An inmate will be limited to one medical record
review PER month". Claimant was used the duty by state employee Andrea Culclager to do a
proper investigation, she breached that duty owed to the claimant, and claimants violations of his
redress of conditions of his confinement are an exact result of her omission to investigate the breach.

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? 06/23/2023 ; to whom? Andrea Culclager Central Office Appeals
(Yes or No) (Month) (Day) (Year) (Department)
Department/ADC ; and that the following action was taken thereon: No merits found to claimants claim

and that \$ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? NO ; if so, state name and address

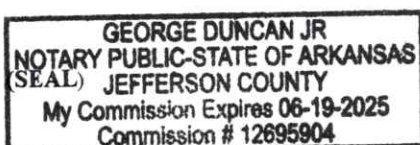
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: _____ ; and was acquired on _____, in the following manner:

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.

Joshua Stockton (Print Claimant/Representative)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Arkadelphia (City) AR 7160 (State)



on this 14th day of August, 2023
(Date) (Month) (Year)

George Duncan Jr

(Notary Public)

SF1- R7/99

My Commission Expires: _____ (Month) (Day) (Year)

GEORGE DUNCAN JR.
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 08-19-2021
Commission # 12892001

I.) Duty: Under State Code of Arkansas §12-27-103 Establishment - Powers and duties (B)(1), The Department of Corrections (Arkansas Division of Corrections) shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary; (b) The Department of Corrections shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the department of corrections. (7) The Department of Corrections shall receive all offenders committed to the department of corrections for conviction of felonies or other offenses the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to the policies established by the Board of Corrections. Authority - The Board of Correction and Community punishment is vested with the Authority to promulgate this administrative rule by ARK. Code ANN. - §§12-27-105, 16-93-1203, and 16-93-1205 (Michie Supp. 1995).

II.) Applicability - This policy applies to Employees and OFFENDERS of the - Department of Correction (D.O.C) and the Department of Community Punishment (DCP) - STAFF, inmates and residents of community punishment centers.

III.) Policy - It is the Policy of the Board of Corrections And Community - Punishment that offenders are provided an opportunity to submit grievances regarding policy, conditions, incidents, or Actions related to incarceration/- Confinement which directly impact them.

IV. Guidelines - A.) Administrative Directives establishing procedures will be set forth by each Agency. B.) Procedures shall, at Minimum provide for the following: Timely, Effective and impartial processing of grievances; An Appeals process; appropriate documentation of grievance activity; and Speedy disposition of Emergency situations, with security and safety the paramount concern.

C.) Use of the Grievance procedure shall occur without restraint, Coercion, discrimination, interference or reprisal. Violation of this guideline shall result in prompt and decisive action.

- CURRENT With Amendments received through November 15, 2022. ARK. Code - 004.03.1-835.

Negligence STANDARD Authority:

In the Eastern District of Arkansas, CASE: Gary V. Langley, 2:17-CV-00117-LPR (E.D. ARK. SEP. 13, 2021) it says, "To prevail on a claim of negligence," in Arkansas, "The plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant Breached that duty, and that the Breach was the proximate Cause of the Plaintiff's injuries". (1. Duty, 2. Breach of Duty, 3. Causation).

V.) STANDARDS: American Correctional Association - Standard for Adult Community - Residential Services, 3rd edition, Standard 3-ACRS-3D-07, and Standards - For Adult Correctional Institutions, 3d Edition, Standard 3-4271.

Duty
3.) Claimant was owed the Duty By Defendant Andres Culclager vested by the STATE to the Board of Corrections found in Ark. Code § 12-27-103(b)(1) The change of claimant's care (which includes medical care) Rights afforded him, as well as his Grievance procedure rights vested in Ark. Code 004, 03.1-835 For Redress of his conditions of Confinement incidents to be available and investigated.

Breach of duty - STATES Employee Andrea Culclager at Central Office did breach the duty owed to claimant in negligent conduct by not properly investigating claimant's appeal to her office and not looking into claimant's medical jacket thoroughly to make an informed decision prior to her findings of "without merit" to the Contractor's Denial on kiosk message of claimant's access to his Medical Records, requiring him to present a Court order (Evidence 4) on kiosk message dated 04-12-2023 at 08:13:38 AM. Defendant (at → on Evidence 1) does clearly state she did "A review of your electronic medical records indicates you requested your medical records on April 17, 2023."... So she seen the kiosk messages for that day of 4/17/2023, but negligently failed to mention the one that said clearly - on 4/17/2023 at 08:13:38 AM - "I will need to see your Court order on this, please". Claimant clearly Grieved on PB-23-00129 that he was Denied access to his Medical Records by Contractor staff.

(Evidence 2) On claimant's step 2 process Ramona Huff Replied - "you may review your Jacket 1 hour once a month. If you have Court ordered privileges we have to have proof." - 7-18-23. Failing to ever inform claimant of Evidence 3 (No. 800 Page - 16, 2(e) "Except in cases where an inmate review of Medical Records is for Pending Litigation". (Which I informed Ms. Huff it was for Pending Litigation), which is why she insisted on Court orders.

The defendant Andrea Culclager had All this information available to her in my Medical Records, kiosk messages and did not intervene in a corrective manner which is a duty owed to the claimant AS A STATE worker is negligent conduct.

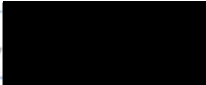
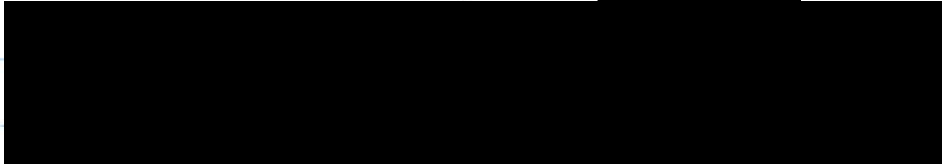
Causation - The violations of State Code and policies would not have occurred if the defendant Andrea Culclager had done a thorough medical records review that is used on Appeal to her office for a appeal for corrective actions to be done for Contractor violative Customs and practices of policies of Ad-C and

the detriment due to the states vestations of Authority to its employees for the care of its ward inmates.

Compensation is monetarily sought for these negligent omissions by state Employee Andrea Culelger's negligent conduct by failing to intervene in a corrective manner a violative issue given written notice of, of which the state's employee failed to correct.

Respectfully Submitted,

 # 

Joshua Stuckton # 


8-9-2023

DEPUTY/ASSISTANT DIRECTOR'S DECISION

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE#: [REDACTED] 23-00129

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION:

On April 17, 2023, you grieved, "INMATES ONE COMPLIANT is Retaliation From Wellpath, LLC Employees IN Denying INMATE ACCESS TO HIS MEDICAL RECORDS DUE to HIS grievances that He did upon VARIOUS Wellpath, LLC Employees And due to those grievances wellpath employees have violated their own custom/ policy of ACCESS To My records every 30 days and Now insist on me getting A COURT Order to have ACCESS, which is Retaliation conduct on protected activity by Wellpath employees And has violated inmates. Rights under the First Amendment of U.S. Constitution And Also violates the Arkansas State Constitution As well As Codes in doing so. Which puts Liability upon Mrs. Holmes As Records Keeper for Wellpath LLC And respondent to all Wellpath Kiosk messages in "Priority," As Well As Mrs. Huff by her Enforcement of the need of Any Court order (even though Wellpaths own custom/policy is to allow access for 1 hr. every month to inmates who need it)."

The medical department responded, "No one ever denied you access every 30 days. You requested to review your records again 2 weeks after you saw the. You were told then you could only review them more often if you had proof of court orders. You have been allowed to review your records monthly. Therefore I am finding this grievance without merit."

Your appeal states, "There was "Retaliation" From-within the Medical- On 4/18 Mrs. Holmes told me that there was a miscommunication from inside their office And that "someone" told her that I had A court order already, so she had insisted on a copy Before Being allowed to come"

→ A review of your electronic medical records indicates you requested to review your medical records on April 17, 2023, March 31, 2023, March 1, 2023, February 19, 2023, and February 9, 2023, and January 31, 2023.

Documentation indicates you reviewed your records on April 18, 2023, March 3, 2023, and February 1, 2023.

According to medical policy No. 800.00, "the Medical Record review will be limited to a singular session not to exceed 1 hour in duration. An inmate will be limited to one Medical Record review per month."

Therefore, this appeal is without merit.

DIRECTOR

Aundrea Culvergen 6/23/2023

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

Evidence 2

GRIEVANCE OFFICE

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center Pine Bluff Complex

APR 19 2023

Name Joshua Stockton

ADC# [REDACTED]

Brks # [REDACTED]

Job Assignment Correctional

RECEIVED

FOR OFFICIAL USE ONLY

GRV. [REDACTED]

Date Received: 4-19-23GRV. Code #: 6004/17/2023 (Date) STEP ONE: Informal Resolution4/18/23 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)If the issue was not resolved during Step One, state why: Someone from medical told ms. Holmes that I did already have a court order and I did not and interfered.

(Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? yes If yes, circle one: medical or mental**BRIEFLY** state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print): INMATES One Complaint isRetaliation From wellpath, LLC Employees IN Denying INMATE Access To His MEDICAL RECORDS Due to His grievances that He did upon various wellpath, LLC Employees And due to those grievances wellpath employees have violated their own Custom/Policy of Access To My records every 30 days And now insist on me getting a Court order to have Access, which is Retaliatory Conduct on protected activity by wellpath employees And has violated inmates rights under the First Amendment of U.S. Constitution And also violates the Arkansas State Constitution As well as Codes in doing so which puts Liability upon Mrs. Holmes as Records Keeper for wellpath LLC and respondent to all wellpath Kiork Messages in 'Privacy', as well as Mrs. Huff by her Enforcement of the need of any Court order (even though wellpaths own Custom/Policy is to allow Access for 1 hr. every month to inmates who need it).[Signature]
Inmate Signature

[REDACTED]

4/17/23
DateIf you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.**THIS SECTION TO BE FILLED OUT BY STAFF ONLY**This form was received on 4-17-23 (date), and determined to be Step One and/or an Emergency Grievance (Yes or No). This form was forwarded to medical or mental health? Yes (Yes or No). If yes, nameof the person in that department receiving this form: [Signature] Date 4-17Byrnes Hall
PRINT STAFF NAME (PROBLEM SOLVER)[REDACTED]
ID Number[Signature]
Staff Signature4-17-23
Date ReceivedDescribe action taken to resolve complaint, including dates: You may Review your Ticket 1 hour once a month. If you have court ordered privileges we have to have proof.[Signature] 7-18-23
Staff Signature & Date Returned[Signature] 4/18/23
Inmate Signature & Date ReceivedThis form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).Staff Who Received Step Two Grievance: Received Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: MAY 2-5-2023 Date: _____**DISTRIBUTION: YELLOW & PINK** - Inmate Receipts; **BLUE** - Grievance Officer; **ORIGINAL** - Given back to Inmate after Completion of Step One and Step Two. Correctional Programs

- 2) To compile a chronology of clinical documentation, to include the identification of staff persons, for the purpose of litigation.
- b. Access to an inmate's Medical Record will be strictly controlled and subject to operational constraints, including when and where the inmate will review the Medical Record and the duration of the review session.
- c. An inmate who reviews their Medical Record will be expected to comply with any additional requirements. Failure to comply with Medical Record review requirements will result in suspension of Medical Record review and may possibly result in disciplinary action.
- d. The Medical Department will not provide paper or other supplies to an inmate to conduct a Medical Record review. Inmates will be responsible for providing those items.
- e. Except in cases where an inmate review of Medical Records is for pending litigation (see paragraph 3 below), the Medical Record review will be limited to a singular session not to exceed 1 hour in duration. An inmate will be limited to one Medical Record review per month.
- f. An inmate will not be provided with a copy of any part of his or her Medical Record, except for those forms where a copy is designated for the inmate, such as duty restrictions or diet restrictions.

2. Process:

- a. Inmates will submit a request to review their Medical Record using the "Request for Interview" form.
- b. Inmate requests to review their Medical Record will be forwarded to the site Medical Records Clerk who will immediately:
 - 1) Date stamp the request
 - 2) Schedule a specific date and time for the Medical Record review to be conducted within 10 – 15 working days from the date of receipt of the request.
- c. The Medical Records Clerk is accountable to ensure the inmate is notified and a "lay-in" is submitted for the date and time scheduled for the review.
- d. The Health Services Administrator will appoint a health care services staff member to oversee the review, and who will remain with the inmate the Medical Record review. The inmate will not be left alone with his or her Medical Record.

FOR STAFF USE ONLY

Evidence 4

Kiosk Responses

DATE: 04/17/2023 "I will need to see your Court
Time: 08:13:38 AM order on this, please".

DATE: 04/18/2023 "I am sorry I wanted to see if you
Time: 06:05:37 AM were able to view your Jacket at
Anytime since you do have some
kind of court order, I will call for you
when security allows."

From: [ASCC New Claims](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Kathryn Irby](#); [Mika Tucker](#); [Bilenda Harris-Ritter](#)
Subject: CLAIM: Joshua Stockton v. ADC, Claim No. 240266
Date: Tuesday, August 29, 2023 1:21:00 PM
Attachments: [Joshua Stockton ADC agency ltr 240266.pdf](#)
[Joshua Stockton Claim 240266.pdf](#)

Please see attached. Contact Kathryn Irby with any questions.

Thank you,
Caitlin

Caitlin McDaniel

Administrative Specialist II

Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-1619

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

August 29, 2023

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602

(via email)

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240266

Dear Mr. Burns,

Enclosed please find a copy of the above-styled claim filed against the Arkansas Division of Correction. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Mika Tucker

ES: cmcdaniel

cc: Joshua Stockton (ADC [REDACTED]), *Claimant* (w/ encl.)
Bilenda Harris-Ritter, *counsel for Ark. Dept. of Corrections* (w/encl.) (via email)

<p>Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.</p>
--

From: [Thomas Burns \(DOC\)](#)
To: [ASCC Pleadings](#)
Subject: Joshua Stockton v ADC 240266
Date: Friday, September 1, 2023 7:31:29 AM
Attachments: [0678_001.pdf](#)
[image001.png](#)

Answer

Thank you,
-TB



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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON ([REDACTED])

CLAIMANT

v.

NO. 240266

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

ANSWER TO COMPLAINT

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

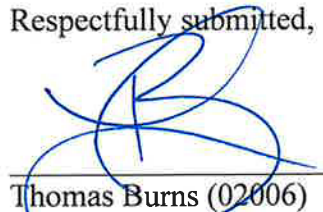
1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.

2. The applicable account information required by the Commission is:

- | | |
|---------------------------|--------------------------|
| a. Agency number: 0480 | b. Cost Center: HCA 0100 |
| c. Internal Order: 340301 | d. Fund Center: 509 |

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

Respectfully submitted,



Thomas Burns (02006)
Legal Services Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602-9411
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 1st day of September 2023 on the Claimant by placing a copy of the same in the U. S. Mail, regular postage, to:

Joshua Stockton ([REDACTED]
[REDACTED]



Thomas Burns

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [ASCC Pleadings](#); [Mika Tucker](#)
Subject: CORR: Joshua Stockton v. ADC, Claim No. 240266
Date: Thursday, October 5, 2023 4:11:53 PM
Attachments: [Joshua Stockton v. ADC266.pdf](#)

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 5, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]
[REDACTED]

RE: ***Joshua Stockton v. Arkansas Division of Correction***
Claim No. 240266

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)

From: [Thomas Burns \(DOC\)](#)
To: [ASCC Pleadings](#)
Subject: Joshua Stockton v ADC 240266
Date: Monday, November 6, 2023 2:21:18 PM
Attachments: [1658_001.pdf](#)
[image001.png](#)

Motion Dismiss

Thank you,
-TB



Confidentiality Notice: This e-mail message and any attachments is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It is for the intended recipient only. If an addressing or transmission error has misdirected this e-mail, please notify the author by replying to it. If you are not the intended recipient you may not use, disclose, distribute, copy, print or rely on this email.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON ([REDACTED])

CLAIMANT

v

NO. 240266

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

MOTION TO DISMISS

Comes Now the Respondent, Arkansas Department of Corrections (ADC), for its Motion to Dismiss, states:

1. The inmate’s claim should be dismissed pursuant to the Arkansas Rules of Civil Procedure (ARCP) 12(b)(6) as it fails to state facts upon which relief can be granted.

2. On a motion to dismiss pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v Morgan*, 2011 Ark. 94. “However, [Arkansas’s] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief.” *Id.* The Court should “treat only the facts alleged in the complaint as true but not the plaintiff’s theories, speculation, or statutory interpretation.” *Id.*

3. An “important mechanism for weeding out meritless claims [is a] motion to dismiss for failure to state a claim.” *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v American State bank*, 339 F.3d 764 (8th Cir. 2003). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcraft v Iqbal* 556 U.S. 662 (2009). Although detailed factual allegations are not required, more that “unadorned, the-defendant-unlawfully-harmed-me-

accusations” are required. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true, state a claim to relief that is plausible on its face. *Id.* A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

4. When a trial court is presented with extraneous materials outside of the pleadings and does not exclude those materials, a motion to dismiss for failure to state facts upon which relief can be granted shall be treated as one for summary judgment. *Norris v Davis, 2014 Ark. App. 632 (2014)*

5. The inmate seeks the sum of \$8500.00, for alleged Medical (Wellpath) and 1st Amendment violations. Although the inmate seeks an award of damages (\$8500.00), he fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must be an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company, 362 Ark. 317, 208 S.W. 3d 153 (2008)*. The inmate’s claim, even if true, does not support a claim for monetary relief.

6. Even if the inmate were to plead with more specificity, he would still not be able to prevail. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett, 308 Ark. 291, 824 S.W. 2d 377 (1992)*. Even taking the inmate’s allegations true as pleading, and giving him the benefit of every possible inference, his mere inconvenience of alleged wrongdoing can never render a claim that is anything but speculation.

7. Pro Se parties are not given special treatment and are held to the same standard as a licensed attorney. *Pressler v. Ark. Publ. Serv. Comm’n, 2011 Ark. App. 512, at 9, 385 S.W.3d 349, 355 (citing Elder v. Mark Ford & Assocs., 103 Ark. App. 302, 288 S.W.3d 702 (2008))*. The

Claims Commission notes that under Arkansas law, a claimant choosing to represent himself is held to the same standard as an attorney. *Michael Pickens v ADC claim 190793 (ASCC 2019)*.

8. Whether a plaintiff is represented by counsel or is appearing pro se, his complaint must allege specific facts sufficient to state a claim. *See Martin v Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)*.

9. A complaint must state facts, not mere conclusions, in order to satisfy the requirements of Rule 8 of the Arkansas Rules of Civil Procedure. *Doe v Weiss, 2010 Ark. 150*.

10. In reviewing whether a complaint is subject to dismissal, the Court must accept as true all factual allegations in the complaint, but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007))*. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “Nor does a complaint suffice if it ‘tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id. (quoting Twombly, 550 U.S. at 557)*. Rather, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly, 550 U.S. at 570*. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal, 556 U.S. at 678*. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id. (quoting Twombly, 550 U.S. at 556)*. A well pleaded complaint may proceed even if it appears that actual proof of those facts is improbable and that recovery is very remote and unlikely. *Twombly, 550 U.S. at 556*. A complaint cannot, however, simply leave open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. *Id. at 561*. Rather, the facts set forth in the complaint must be sufficient to nudge the claims across the line from conceivable to plausible.

Id. at 570. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged –but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (quoting *Fed.R.Civ.P.* 8(a)(2)).

11. The Plausibility standard is not akin to a “probability requirement” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it” stops short of the line between possibility a plausibility of entitlement to relief” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

12. The inmate is complaining that Wellpath refused to allow him to see his medical record more than once in a thirty (30) day period.

13. The ADC contracts all medical (including medical records which they keep) to Wellpath, the States medical provider, Wellpath is not subject to the jurisdiction of the State Claims Commission.

14. The inmate claims “INMATES ONE COMPLAINT is retaliation from Wellpath, LLC Employees”. *See attached Ex A, pages 6 and 7.*

15. Page 6 grievance also states they have violated his First Amendment of the U.S. Constitution. *Id.*

16. The inmate is making claims of his conditions of confinement. This clearly falls under 42 USC 1983 *First page of Inmates complaint, Ex. A.*

17. The inmate is making claims against Wellpath and Constitutional claims and pursuant to the law the Commission is barred from hearing such claims. These claims may be made in a Court of general jurisdiction.

18. The Claims Commission does not have the jurisdiction to hear this claim.

19. Pursuant to the Prison Litigation Reform Act (PLRA), “no actions shall be brought with respect to prison conditions under Section 1983 of this title or any other Federal law, by a prisoner confined in any jail, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C § 1997e. In 1997, the Arkansas legislature adopted the PLRA’s exhaustion requirement by enacting Ark. Code Ann. §16-106-202. That statute follows the PLRA by adopting a grievance exhaustion requirement for state actions:

- (a) A civil action **or claim** initiated against...Department of Correction...by an inmate in a penal institution or incarcerated person appearing pro se may be:
 - (1) Dismissed without prejudice by the court on its own motion or on a motion of the defendant, if all administrative remedies available to the inmate have not been exhausted.

20. The inmate has not received anything against the ADC only Wellpath. Therefore, the inmate has failed to exhaust his administrative remedies. *See Inmates complaint attached* “A basic rule of administrative procedure requires that an agency be given the opportunity to address a question before a complainant resorts to the courts. Where a party has failed to exhaust his or her administrative remedies, the trial court lacks jurisdiction over the suit” *Ark. HHS v Smith*, 370 Ark. 490. One must exhaust their administrative remedies before they may proceed in Court. *See Johnson v Johnson*, 385 F.3d 503 (2004).

21. The inmate has filed a complaint that he knows is in bad faith and not supported by the facts. The Commission should award the ADC fees and costs for having to respond to this baseless complaint.

22. This same claim, if presented to a court of general jurisdiction would, as a matter of law, be dismissed.

23. “The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015). “Specifically, 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, then the commission shall make no award on the claim.” Ark. Code Ann. § 19-10-204(3)(B) (West Supp. 2015). The claimant has not been damaged and only makes mere assertions that he has been damages. Without damages a Court would dismiss the claim in its entirety.

WHEREFORE, the Respondent prays that the motion be granted and the complaint dismissed; for their attorney’s fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,

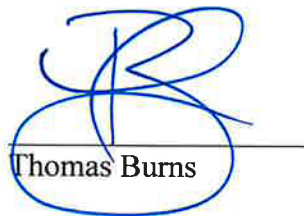


Thomas Burns (02006)
Legal Services Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 6th day of November 2022, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Joshua Stockton ([REDACTED])
[REDACTED]



Thomas Burns

Please print in ink or type

AUG 17 2023

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Joshua Stockton (ADC [REDACTED]) Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces			
Claim No.			
Date Filed	(Month)	(Day)	(Year)
Amount of Claim \$			
Fund			

COMPLAINT

Joshua Stockton (ADC [REDACTED]), the above named Claimant, of [REDACTED] (City)
(Name) (Street or R.F.D. & No.)
County of [REDACTED] represented by Prose (self)
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of [REDACTED] (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas Department of Corrections (Division) Amount sought: \$8,500.00

Month, day, year and place of incident or service: 06/23/2023 Policy / duty violation against Plaintiff due
Explanation: STATE Employee Audrea Culclager Did not do A proper investigation that was
owed to the Claimant redress due to his conditions of confinement issue brought to her office
Claimant clearly notified her office of state contractors going against their own policy /
practices as Evidence (3-4) show in (3)-Policy and (4) kirk reply from well with employee
Mrs. Holmes At [REDACTED] on kirk request. Arkansas Code 03.1 - 835 As well as
Arkansas Code [REDACTED] the Duties and Policies vested by the state to A.D.C. officials
which protect inmates redress attempts for conditions relating to their confinement and to the
Care or violations of that care. Claimant was used by the states Contractor Access every
30 days to his own medical records. Access was interfered with, prolonging the time period of
every 30 days due to contractors requiring a court order (Evidence #4) which goes against
well with (No. 800 (Evidence 3) Policy (Evidence #2 - "If you have Court order privileges we have
to have proof" is grievance response to Grievance # [REDACTED] 23-00129 is in direct conflict to No. 800.
Policy which states, "(e.) except in cases where an inmate review of medical records is for
Pending litigation (see paragraph 3), The medical record review will be limited to a single
session not to exceed 1 hour in duration. An inmate will be limited to one medical record
review PER month". Claimant was used the duty by state employee Audrea Culclager to do A
proper investigation, she breached that duty owed to the Claimant, and claimant's violations of his
redress of conditions of his confinement Are an exact result of her omission to investigate the breach.

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? 06/23/2023 : to whom? Audrea Culclager Central Office Appeals
(Yes or No) (Month) (Day) (Year) (Department)
Department/ADC : and that the following action was taken thereon: No merits found to Claimant's claim

and that \$ 0 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:

EXA

I.) Duty: Under State Code of Arkansas §12-27-103 Establishment - Powers and duties (B)(1), The Department of Corrections (Arkansas Division of Corrections) shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary; (b) The Department of Corrections shall employ such officers, employees, and agents and shall secure such officers and quarters as are deemed necessary to discharge the functions of the department of corrections. (7) The Department of Corrections shall receive all offenders committed to the department of corrections for conviction of felonies or other offenses the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to the policies established by the Board of Corrections. Authority - The Board of Correction and Community punishment is vested with the Authority to promulgate this administrative rule by ARK. Code ANN. - §§12-27-105, 16-93-1203, and 16-93-1205 (Michie Supp. 1995).

II.) Applicability - This policy applies to Employees and OFFENDERS of the - Department of Correction (D.O.C) and the Department of Community Punishment (DCP) - STAFF, inmates and residents of community punishment centers.

III.) Policy - It is the Policy of the Board of Corrections And Community - Punishment that offenders are provided an opportunity to submit grievances regarding policy, conditions, incidents, or Actions related to incarceration/- Confinement which directly impact them.

IV. Guidelines - A.) Administrative Directives establishing procedures will be set forth by each Agency. B.) Procedures shall, at Minimum provide for the following: Timely, Effective and impartial processing of grievances; AN - Appeals process; appropriate documentation of grievance activity; and Speedy-disposition of Emergency situations, with security and safety the Paramount Concern.

C.) Use of the Grievance procedure shall occur without restraint, Coercion, discrimination, interference or reprisal. Violation of this guideline shall result in prompt and decisive action.

- CURRENT with Amendments reviewed through November 15, 2022. ARK. Code - 004.03.1-835.

Negligence STANDARD Authority:

In the Eastern District of Arkansas, CASE: Gary V. Langley, 2:17-CV-00117-LPR (E.D. ARK. SEP. 13, 2021) it says, "To prevail on a claim of Negligence", in Arkansas, "The plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant Breached that duty, and that the Breach was the proximate Cause of the Plaintiffs injuries". (1. Duty, 2. Breach of Duty, 3. Causation).

V.) STANDARDS: American Correctional Association - Standard for Adult Community - Residential Services, 3rd edition, standard 3-ACRS-3D-07, and Standards - For Adult Correctional Institutions, 3d Edition, Standard 3-427.

Duty
3.) Claimant was owed the Duty by Defendant Andrus Culclager vested by the STATE to the Board of Corrections found in Ark. Code § 12-27-103(b)(1) The change of claimant's care (which includes medical care) Rights afforded him, as well as his Grievance procedure rights vested in Ark. Code 004.03.1-835 For redress of his conditions of Confinement incidents to be available and investigated.

Breach of duty - STATES Employee Andrea Culclager AT Contractor Office did breach the duty owed to claimant in negligent conduct by not properly investigating claimant's appeal to her office and not looking into claimant's medical jacket thoroughly to make an informed decision prior to her findings of "without merit" to the Contractor's Denial on text message of claimant's access to his Medical Records, requiring him to present a Court order (Evidence 4) on text message dated 04-17-2023 at 08:13:38 AM. Defendant (as → on Evidence 1) does clearly state she did "A review of your electronic medical records indicates you requested your medical records on April 17, 2023..." So she seen the text messages for that day of 4-17-2023, but negligently failed to mention the one that said clearly - on 4/17/2023 at 08:13:38 AM - "I will need to see your Court order on this, please". Claimant clearly Grieved on PB-23-00129 that he was denied access to his Medical Records by Contractor staff.

(Evidence 2) On claimant's step 2 process Ramona Huff Replied - "you may review your Jacket 1 hour once a month. If you have Court ordered privileges we have to have proof." - 7-18-23. Failing to ever inform claimant of Evidence 3 (No. 800 Page - 16, 2(e) "Except in cases where an inmate review of Medical Records is for Pending Litigation" (which I informed Ms. Huff it was for Pending Litigation), which is why she insisted on Court orders.

The defendant Andrea Culclager had all this information available to her in my Medical Records, text messages and did not intervene in a corrective manner which is a duty owed to the claimant as a STATE worker is negligent conduct.

Causation - The violations of State Code and Policies would not have occurred if the defendant Andrea Culclager had done a thorough medical records review that is owed on Appeal to her office for a appeal for corrective actions to be done for Contractor violative customs and practices of policies of And-C and

the detriment due to the states vestations of Authority to its employees for the care of its ward inmates.

Compensation is monetarily sought for these negligent omissions by state Employee Andria Culcager's negligent conduct by failing to intervene in a corrective manner a violative issue given written notice of, of which the state's employee failed to correct.

Respectfully Submitted,



Joshua Spuckler

8-9-2023

DEPUTY/ASSISTANT DIRECTOR'S DECISION

INMATE NAME: Stockton, Joshua

ADC #: [REDACTED]

GRIEVANCE#: [REDACTED] 23-00129

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION:

On April 17, 2023, you grieved, "INMATES ONE COMPLIANT is Retaliation From Wellpath, LLC Employees IN Denying INMATE ACCESS TO HIS MEDICAL RECORDS DUE to HIS grievances that He did upon VARIOUS Wellpath, LLC Employees And due to those grievances wellpath employees have violated their own custom/ policy of ACCESS To My records every 30 days and Now insist on me getting A COURT Order to have ACCESS, which is Retaliation conduct on protected activity by Wellpath employees And has violated inmates. Rights under the First Amendment of U.S. Constitution And Also violates the Arkansas State Constitution As well As Codes in doing so. Which puts Liability upon Mrs. Holmes As Records Keeper for Wellpath LLC And respondent to all Wellpath Kiosk messages in "Priority," As Well As Mrs. Huff by her Enforcement of the need of Any Court order (even though Wellpaths own custom/policy is to allow access for 1 hr. every month to inmates who need it)."

The medical department responded, "No one ever denied you access every 30 days. You requested to review your records again 2 weeks after you saw the. You were told then you could only review them more often if you had proof of court orders. You have been allowed to review your records monthly. Therefore I am finding this grievance without merit."

Your appeal states, "There was "Retaliation" From-within the Medical- On 4/18 Mrs. Holmes told me that there was a miscommunication from inside their office And that "someone" told her that I had A court order already, so she had insisted on a copy Before Being allowed to come"

→ A review of your electronic medical records indicates you requested to review your medical records on April 17, 2023, March 31, 2023, March 1, 2023, February 19, 2023, and February 9, 2023, and January 31, 2023. Documentation indicates you reviewed your records on April 18, 2023, March 3, 2023, and February 1, 2023. According to medical policy No. 800.00, "the Medical Record review will be limited to a singular session not to exceed 1 hour in duration. An inmate will be limited to one Medical Record review per month."

Therefore, this appeal is without merit.

DIRECTOR

Quakea Culver 6/23/2023

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

Evidence 2

GRIEVANCE OFFICE

UNIT LEVEL GRIEVANCE FORM (Unit Level I)

Unit/Center

APR 19 2023

Name Joshua Stockton

ADC#

Brks #

Job Assignment

RECEIVED

FOR OFFICE USE ONLY

GRV.

Date Received:

GRV. Code #:

4/17/2023 (Date) STEP ONE: Informal Resolution

4/18/23 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: Someone from medical told ms. Holmes that I did already have a court order and I did not need interference.

(Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why:

Is this Grievance concerning Medical or Mental Health Services? yes If yes, circle one: medical or mental
BRIEFLY state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print): INMATES ONE COMPLAINT ISRetaliation From wellpath LLC Employees IN Denying INMATE
Access To His MEDICAL RECORDS Due To His grievances that
He did upon various wellpath, LLC Employees And due to these
grievances, wellpath employees have violated their own custom/
policy of access To My records every 30 days And now
insist on me getting a court order to have access, which
is Retaliation Conduct on protected activity by wellpath
employees And has violated inmates rights under the First
Amendment of U.S. Constitution and also violates the Arkansas
State Constitution as well as codes in doing so which puts liability
upon Mrs. Holmes as Records Keeper for wellpath LLC and respondent
to all wellpath Kiork messages in 'Priority', as well as Mrs. Huff by her
Enforcement of the need of any court order (even though wellpaths own
Custom/policy is to allow access for 1 hr. every month to inmates who need it),

Inmate Signature

Date

If you are harmed, threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLYThis form was received on 4-17-23 (date), and determined to be Step One and/or an Emergency Grievance(Yes or No). This form was forwarded to medical or mental health? Yes (Yes or No). If yes, name of the person in that department receiving this form: R. Huff Date 4-17

PRINT STAFF NAME (PROBLEM SOLVER)

II

Staff Signature

Date Received

Describe action taken to resolve complaint, including dates: you may Review your
Jacket 1 hour once a month. If you have
court ordered privileges we have to have proof.

Staff Signature & Date Returned

Inmate Signature & Date Received

This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).Staff Who Received Step Two Grievance: Received Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: MAY 2-5 2023 Date: _____**DISTRIBUTION: YELLOW & PINK** - Inmate Receipts; **BLUE** - Grievance Officer; **ORIGINAL** - Given back to Inmate after Completion of Step One and Step Two. Correctional Programs

- 2) To compile a chronology of clinical documentation, to include the identification of staff persons, for the purpose of litigation.
- b. Access to an inmate's Medical Record will be strictly controlled and subject to operational constraints, including when and where the inmate will review the Medical Record and the duration of the review session.
- c. An inmate who reviews their Medical Record will be expected to comply with any additional requirements. Failure to comply with Medical Record review requirements will result in suspension of Medical Record review and may possibly result in disciplinary action.
- d. The Medical Department will not provide paper or other supplies to an inmate to conduct a Medical Record review. Inmates will be responsible for providing those items.
- e. Except in cases where an inmate review of Medical Records is for pending litigation (see paragraph 3 below), the Medical Record review will be limited to a singular session not to exceed 1 hour in duration. An inmate will be limited to one Medical Record review per month.
- f. An inmate will not be provided with a copy of any part of his or her Medical Record, except for those forms where a copy is designated for the inmate, such as duty restrictions or diet restrictions.

2. Process:

- a. Inmates will submit a request to review their Medical Record using the "Request for Interview" form.
- b. Inmate requests to review their Medical Record will be forwarded to the site Medical Records Clerk who will immediately:
 - 1) Date stamp the request
 - 2) Schedule a specific date and time for the Medical Record review to be conducted within 10 – 15 working days from the date of receipt of the request.
- c. The Medical Records Clerk is accountable to ensure the inmate is notified and a "lay-in" is submitted for the date and time scheduled for the review.
- d. The Health Services Administrator will appoint a health care services staff member to oversee the review, and who will remain with the inmate the Medical Record review. The inmate will not be left alone with his or her Medical Record.

FOR STAFF USE ONLY

Evidence 4

Kiosk Responses

DATE: 04/17/2023

TIME: 08:13:38 AM

"I will need to see your Court order on this, please".

DATE: 04/18/2023

TIME: 06:05:37 AM

"I am sorry I wanted to see if you were able to view your Jacket at Anytime since you do have some kind of court order, I will call for you when security allows."

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [ASCC Pleadings](#); [Mika Tucker](#)
Subject: ORDER: Joshua Stockton v. ADC, Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378
Date: Wednesday, November 8, 2023 2:37:24 PM
Attachments: [Joshua Stockton v. ADC2.pdf](#)
[Stockton-order163.pdf](#)
[Stockton-order164.pdf](#)
[Stockton-order211.pdf](#)
[Stockton-order233.pdf](#)
[Stockton-order234.pdf](#)
[Stockton-order266.pdf](#)
[Stockton-order285.pdf](#)
[Stockton-order378.pdf](#)

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

November 8, 2023

Mr. Joshua Stockton (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Joshua Stockton v. Arkansas Division of Correction***
Claim Nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285, and 240378

Dear Mr. Stockton and Mr. Burns:

Enclosed please find the Orders entered today by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JOSHUA STOCKTON (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 240266

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is the claim filed by Joshua Stockton (the “Claimant”) against Arkansas Division of Correction (the “Respondent”).

Respondent filed an answer denying liability.

The Commission sent correspondence to Claimant on October 5, 2023, advising that Respondent recommended that the claim be denied. In that correspondence, Claimant was given fifteen (15) calendar days to request a hearing and advised that if Claimant did not do so within the specified time frame, Claimant’s claim would be dismissed for failure to respond. To date, Claimant has not responded to the Commission’s October 5, 2023, correspondence.

As such, the Commission hereby unanimously DENIES and DISMISSES this claim for Claimant’s failure to prosecute the claim. Any pending motions are denied as moot.

The Commission notes that, as of the date of this Order, eight (8) claims filed by Claimant within a two-year period have been dismissed: (1) Claim No. 240163, was filed on August 3, 2023, and dismissed on November 8, 2023; (2) Claim No. 240164 was filed on August 3, 2021, and dismissed on November 8, 2023; (3) Claim No. 240211 was filed on August 9, 2023, and dismissed on November 8, 2023; (4) Claim No. 240233 was file on August 12, 2023, and dismissed on November 8, 2023; (5) Claim No. 240234 was filed on

August 12, 2023, and dismissed on November 8, 2023; (6) the instant claim, Claim No. 240266 was filed on August 17, 2023, and dismissed on November 8, 2023; (7) Claim No. 240285 was filed on August 23, 2023, and dismissed on November 8, 2023; and (8) Claim No. 240378 was filed on September 9, 2023, and dismissed on November 8, 2023.

Ark. Code Ann. § 19-10-221 provides,

An inmate in the Division of Correction or the Division of Community Correction who has filed more than three (3) unsuccessful claims or actions under this subchapter within a period of two (2) years may have his or her subsequent claims or motions dismissed by the Arkansas State Claims Commission upon receipt as abuse of process, for one (1) year from the date of dismissal of the inmate's third unsuccessful claim.

Accordingly, the Commission bars Claimant from filing any claims for one year from the date of this Order. Any claims submitted by Claimant within a year from the date of this Order will be dismissed upon receipt pursuant to Ark. Code Ann. § 19-10-221. The Commission notes that this statute does not authorize the Commission to dismiss any pending claims that Claimant may have filed before the date of this Order.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: November 8, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Before the Arkansas State Claims Commission

Joshua Stockton

Claimant

V.

No. 246266

Arkansas
State Claims Commission

NOV 13 2023

Respondent

A.D.C

Arkansas Division of Corrections

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opposition to motion to dismiss

Comes now Claimants, Joshua M. Stockton's [REDACTED], for his opposition to Respondents motion to dismiss.

I, disputed. Claimant, brought forth claim to the State Claims Commission in their Jurisdiction, of state Employees violating the state and ADC policies brought to state Employee Andrew Culbarger's attention as 'Deputy Director over medical grievances' for inmates. Of which, she though her negligent omissions to the contractors violations of policy and state adherence to A.D.C's own policies regarding access to his medical records, did negligently fail to investigate the Claimants details of his notices to her office through the grievance procedures. The state is ultimately responsible for the acts and omissions of its contractor, as it's the states duties to the responsibility over his medical, as well medical records, especially when notified of misconduct. Omissions by negligence is an actionable offense.

2. disputed. plaintiff (Claimants) plead Facts of the case and did produce evidence of Contractor Responses (Exhibit 2, Exhibit 1 (ADC Employee), Exhibit 3) and gave the Eastern Districts defined 'negligence standard' of Duty, Breach of duty owed, and Causation of injury. (Page 3, 4) of Complaint. The Facts pleaded were backed with evidence, thus not 'mere conclusions' as respondent claims.

3. disputed. The claimant followed the negligence standard and showed evidence in support of his claims.

4. disputed. claimant presented his claim and has evidence to his allegations thus a dispute of material facts for trial are ripe for adjudication at trial.

5. disputed. Claimants claim brought forth to the state claims Commission never asserted Constitutional claims. Respondent relies upon details outside of the state claims Commission's jurisdiction, as a claims Commission claim is under the officials Sovereign Immunity. see: ADC v. Hobbs, Case no. 5:14-cv-314 JH/BD- (E.D. Ark. Sep. 17, 2015) starting on (p. 12). See also: Crater v. Crater, 311 Ark. 627, 846 S.W. 2d 173, 176 (1993) (does not bar a subsequent action where a party was actually prohibited from asserting a claim in the earlier action).

6. disputed - (see continued pages)

In Crooks v. Nix, 872 F.2d 800 (8th cir. 1989) — Is a 'Similar Case on point' —
Plaintiffs, which said, "Even though defendants have contracted with CMS to furnish Medical
Services this does not provide absolute immunity against a prisoner's claim where prison
Policies are alleged to contribute to the denial of proper medical and dental care — obviously,
If the alleged denial of Medical Care was based on an alleged wrongful diagnostic
Judgment of a physician, the Warden or Prison director, Lacking Professional Medical expertise,
would not be liable on agency Principles for any Constitutional wrong. This is true even though
The independent Contractors or physicians are acting under "Color of state Law". Cf West v. —
Atkins, — U.S. —, 108 S.Ct. 2250, 161 L.Ed 2d 40 (1988). On the other hand, as plaintiff
Points out, although the doctrine of respondeat superior does not apply to Sec. 1983
Cases, a Sec. 1983 claimant may maintain a theory of direct Liability against a
Prison or other official if that official fails to properly train, supervise, direct or
Control the actions of a subordinate who causes the injury. Hahn v. McLeay, 237 —
F.2d 771, 773 (8th cir. 1984); Pearl v. Dobbs, 649 F.2d 608, 609 (8th cir. 1981).
where a prisoner needs medical treatment Prison officials are under a Constitutional
duty to see that it is furnished. Estelle v. Gamble, 429 U.S. at 103, 97 S.Ct. at 290.

" Although these particular defendants might not be responsible for money damages for wrongful treatment by a state doctor, they are subject to an equitable decree that treatment be furnished where needed. Furthermore where the duty to furnish treatment is unfulfilled, the mere contracting of services with an independent Contractor does not immunize the State from Liability for damages in failing to provide a prisoner with the opportunity for such treatment. West v. Atkins, 108 S.Ct. at 2259. On the contrary, "[c]ontracting out prison

medical care does not relieve the State of its Constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their Eighth Amendment rights" *Id.*

" We think the plaintiffs' pleadings sufficiently allege inadequate prison policies or medical supervision which, if true, would result in these defendants being held liable just as if they had refused to deliver those services themselves. The duty to provide such services lies within the statutory and Constitutional obligations of the named defendants. In this sense the defendants have a nondelegable duty to provide medical care when needed.

Constructing the present prose Complaint in a broad and remedial manner we find Plaintiff has demonstrated the existence of a factual dispute as to defendants liability sufficient to overcome defendants motion for summary judgment.

Prose Claimants Claims

7.) Disputed - , 8.) Disputed, -

Plaintiff believes the District Courts rulings 'over-simplifies plaintiffs' Prose Complaint and fails as well to provide the broad, Liberal reading to a prisoner Complaint required under Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed 2d 652 (1972). As the Supreme Court unanimously held in Haines, a prose Complaint, "however ineptly Pleaded," must be held to "Less stringent standards than format pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 520-21, 92 S.Ct. at 596 (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 - S.Ct. 99, 102, 20 Ed. 2d 80 (1957)). see also Estelle v. Gamble, 429 U.S. 97, 106, 97 - S.Ct 285, 292, 50 L.Ed 2d 251 (1976).

Prose
Verified Complaints -

"(A) Verified Complaint is the equivalent of an affidavit for summary - Judgement Purpose" - Williams v. Adams, 935 F.2d 960, 961 (8th Cir. 1991).

9. disputed, Respondents (Ex. A) speaks for itself as a proper claim in its proper form, presented in its proper jurisdictional form as a claim of negligence of State Actors.

10. disputed. Respondent relies on theories or claims Claimant didn't assert, and does not produce any relevant jurisdictional evidence to support his theories.

11. disputed. (see attached pages)

See also 19-34 (H)(1) on page 14 of 31

"The responsible Authority will review the conditions, policies or practices grievous and take appropriate actions"

Arkansas
State Claims Commission

NOV 13 2023

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"B. The ADC's Exhaustion procedure -

The ADC grievance policy in effect at the relevant time in this case was Administrative Directive 19-34. This Directive establishes a three-step procedure. (Id.) First, the inmate must attempt informal resolution by submitting a Unit Level Grievance Form to a designated problem solver within fifteen days of the incident. The Form must include a brief statement that is specific as to the substance of the issue or complaint to include the date, place, "personnel involved or witnesses," and how the policy or incident affected the inmate submitting the form. (Id. § IV(E)(2)) (Emphasis added.) Inmates are cautioned a "grievance must specifically name each individual involved in order that a proper investigation and response may be completed" and an inmate who "fails to name all parties during the grievance process" may have his or her lawsuit or claim dismissed by the Court or Commission for failure to exhaust against all parties. (Id. § IV(C)(4).) And, the grievance form itself reminds prisoners to include the "name of personnel involved" (Id. at 20.) The Problem Solver must respond to the informal resolution within three working days. (Id. § IV(C)(4) and (7).) —

Second, if informal resolution is unsuccessful or the problem solver does not timely respond, the inmate must file a formal grievance with warden on the same Unit Level grievance Form within three working days. (Id. § IV (E)(11) and (F)(5)(7)).

The warden must provide a written response to the formal grievance within twenty working days. (Id. § IV (F)(7).)

Third, an inmate who is dissatisfied with the response or does not timely receive a response, must appeal within five working days to the ADC Assistant Director. (Id. § IV (F)(8) and (G).) The ADC Assistant Director must provide a written response within thirty working days. (Id. at IV (G)(6).) A decision or rejection of an appeal at this level is the end of the grievance process. (Id.)

In Whitmore v. Ryals, 4:20-CV-001255 LPR-PSH (E.D. Ark. Mar. 21, 2022) (p.8) states, "An inmate need only exhaust available administrative remedies. East v. Minnehaha Cty., 986 F.3d 816, 821 (8th Cir. 2021). "Administrative remedies are not available if 'prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation' "Id. (quoting Ross v. Blake, 136 S. Ct. 1850, 1860 (2016)). Administrative remedies may also be unavailable if prison officials prevent inmates from utilizing the grievance procedures or fail to comply with such procedures. See Gibson v. Weber, 431 F.3d 339 (8th Cir. 2005); Miller v. Morris — 247 F.3d 736 (8th Cir. 2001).

The Eighth Circuit in Smith v. Andrews, 21-3356 (8th Cir. Jul. 26, 2023) on the issue of

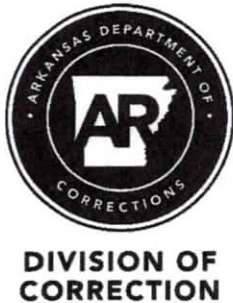
The PLRA's Exhaustion requirement said, (Page 5), "In Ross, the Supreme Court ended a Judge-made exception (the 'special circumstances' exception) to the PLRA's Exhaustion requirement. Ross, 578 U.S. - at 638-39. In doing so, the Court emphasized the PLRA's mandatory language. Id. at 638 -

("As we have often observed, that language is 'mandatory': An inmate 'shall' bring 'no action' (or said more conversationally, may not bring any action) absent exhaustion of available administrative remedies." (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006))). However, the Court

also explained that the PLRA contains "its own textual exception": "[An] inmate is required to exhaust those, but only those, grievance procedures that are (available, i.e.,) 'capable of use' to obtain 'some relief for the action complained of'." Id. at 642 (quoting Booth v. Churner, 532 U.S. 731, 738 (2001)). But "to state that standard, of course, is just to begin; Courts in the 3

and other cases must apply it to the real-world workings of prison grievance systems." Id. The Supreme Court then noted "as relevant here three kinds of circumstances in which an administrative remedy" may be unavailable. Id. at 643 (emphasis added). Those situations are

(1) when the procedure "operates as a simple dead end"; (2) when the administrative scheme is so opaque that it becomes, practically speaking, incapable of use; and (3) when prison administrators deliberately thwart prisoner attempts to use the process. Id. at 643-44.



[REDACTED]
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Phone: 870-267-6999 • Fax: 870-267-6244
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ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Grievance Procedure

NUMBER: 19-34

SUPERSEDES: 19-20

APPLICABILITY: All employees and inmates

PAGE 1 of 31

REFERENCE: AR 835 - Grievance Procedure for Offenders

APPROVED: Original signed by Dexter Payne

EFFECTIVE DATE: 12/2/2019

I. POLICY:

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

II. EXPLANATION:

The grievance procedure is an administrative process for the submission and resolution of inmate problems and complaints. The process is designed to solve the problem at the lowest level, as promptly as feasible, and in a manner that is fair, reasonable, and consistent with the Division of Correction's mission.

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

III. DEFINITIONS:

- A. Informal Resolution – the first step consisting of a written complaint (Unit Level Grievance Form, Attachment I) by an inmate that is intended to allow staff the

opportunity to resolve an issue on an informal basis, and to serve as a prerequisite to the second step, a formal grievance.

- B. Grievance – the second (formal) step where a written complaint using the same form used for the Informal Resolution (Unit Level Grievance Form, Attachment I) is submitted by an inmate on the inmate's own behalf (an inmate cannot grieve on behalf of another inmate) regarding:
 1. A policy applicable within his or her unit/center of assignment that personally affects the inmate;
 2. A condition in the facility that personally affects the inmate;
 3. An action of another inmate, or inmates, that personally affects the inmate;
 4. An action of an employee(s), contractor(s), or volunteer(s) that personally affects the inmate; or
 5. An incident occurring within his or her facility that personally affects the inmate.
- C. Warden – the Warden or Center Supervisor of the facility or designee.
- D. Appeal – a written request directed to a Chief Deputy/Deputy/Assistant Director for further action to resolve the issue or complaint in the grievance based upon the inmate's assertion that the issue has not been resolved at the Unit level. (The appeal cannot raise new or additional issues or complaints.)
- E. Working Days – Monday through Friday, excluding state observed holidays.
- F. Emergency – a problem that, if not immediately addressed, subjects the inmate to a substantial risk of personal injury or other serious and irreparable harm such as, physical abuse. If a grievance, submitted as an emergency grievance by the inmate, is deemed an emergency by the problem solver, the grievance is immediately submitted to the Warden/highest ranking supervisor at the unit without the completion of Step One, the informal process; however, if the grievance is not an Emergency, it will be processed under Step One.
- G. PREA Grievance – Grievance where inmate is alleging staff-on-inmate or inmate-on-inmate sexual abuse or sexual harassment as those terms are defined in the PREA Administrative Directive. A Problem Solver should immediately submit a suspected PREA grievance to the highest ranking supervisor at the unit, who will then contact the duty warden, without the completion of Step One, the informal process; however, if the duty warden finds that the grievance is not a PREA grievance, it will be returned to the Problem Solver and processed under Step One.

inmate must first seek a resolution of the complaint informally by taking Step One under this policy.

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

A. Proposed Changes to the Procedure

When the Division proposes to adopt changes to any policy which affects the inmate grievance process, the proposed changes shall be posted in prominent locations **(to include employee and inmate bulletin boards and including electronic distribution) throughout the institution at least 30 days prior to the adoption of the changes.** All comments shall be considered prior to adoption of the change and shall be kept as part of the appropriate policy file documentation. **Inmates in Restrictive Housing will be provided a copy of the proposed change by the Grievance Officer at least 30 days prior to the adoption of the change.**

B. Communication of Procedure

1. Written notification of the Inmate Grievance Procedure, and any changes there to, will be distributed to both inmates and employees. In addition, arriving inmates and new employees will have an opportunity to ask questions about the procedure and have them answered verbally.
2. If an inmate has a disability affecting communication or is not fluent in the English language, interpretive or explanatory services will be made available.
3. All employees at the facility level shall receive training by designated staff in the skills necessary to assist or participate in the inmate grievance procedure.
4. A summary of the Inmate Grievance Procedure will be included in the Inmate Handbook. However, the Inmate Grievance procedure is governed by this Administrative Directive and not any summary in the Inmate Handbook. All inmates shall be provided access to this Administrative Directive.

C. Accessibility

Each inmate shall be entitled to utilize the Inmate Grievance Procedure regardless of his or her security status, custody level, job classification, disciplinary status, or any administrative/ judicial decisions affecting the inmate.

3. If the inmate is legally using a name other than the name under which he or she was committed to the Arkansas Division of Correction, both the legal and commitment names shall be used when completing the forms.
4. All forms, except those submitted electronically where and when electronic submission is available, must be legible and in ink, if available. Tape and other adhesive substances should not be used on any grievance forms.
5. If any Grievance Form is received in an unsanitary condition, that form(s) may be photographed and logged and held for evidence for appropriate disciplinary action against the inmate. Unsanitary grievance forms will not be accepted. The Problem Solver will return the grievance form to the inmate and then complete an Incident Report (Form 005).

E. Step One: Informal Resolution Procedure

Inmates are required to seek an informal resolution of a problem/complaint prior to filing a grievance.

1. The Unit Level Grievance Form (Attachment I) shall be completed and submitted within 15 days after the occurrence of the incident, with the date indicated beside "Step 1: Informal Resolution". PREA grievances are not subject to the 15 day time limit.
2. On the Unit Level Grievance Form (Attachment I), and only in the space provided, the inmate should write a brief statement that is specific as to the substance of the issue or complaint to include the date, place, personnel involved or witnesses, and how the policy or incident affected the inmate submitting the form. Illegible or unintelligible grievances will not be accepted, but rather will be returned to the inmate by the Problem Solver with an explanation stating why the grievance will not be accepted. The Problem Solver will then complete an Incident report (Form 005).

Additional sheets, including additional pages of the grievance written on Unit Level Grievance Forms (Attachment I) should not be attached and will be returned to the inmate upon submission or as soon as practical. ONLY THE STATEMENT IN THE SPACE PROVIDED ON THE ATTACHMENT I FORM WILL BE MAINTAINED AND CONSIDERED THE GRIEVANCE SUBMISSION. However, additional sheets attached to PREA grievances will be maintained with the grievance.

3. The Unit Level Grievance Form (Attachment I) should be presented to one of the individuals whose name is posted in the housing unit as a designated Problem Solver. If a Problem Solver is not available, any staff

7. As soon as practical, the HSA, Mental Health Supervisor, or designee will return the Unit Level Grievance Form to the inmate and provide a copy to the Grievance Officer. NOTE: In no event should this period exceed three (3) working days from submission of the Unit Level Grievance Form for Step One by the inmate to the Problem Solver. The HSA, Mental Health Supervisor, or designee should not respond to a grievance that is alleging misconduct by that individual against the inmate; however, where the inmate still has another step in the grievance process to challenge the conduct or the inmate is alleging indirect misconduct (failure to act) as opposed to direct misconduct, such as physical abuse or retaliation, by the HSA or the Mental Health Supervisor, then the Regional Manager or Mental Health Administrator will respond after the medical or mental health department has appropriately logged the resolution.
8. The HSA or Mental Health Supervisor will retain a copy for his or her records and for quality improvement purposes.
9. If the problem (those not referred to medical or mental health departments) can be resolved at the informal level, the Problem Solver should document the action taken on the Unit Level Grievance Form (Attachment I) and then both the inmate and the Problem Solver must sign and date the form.
10. If the problem cannot be resolved at Step One, the informal level, the Problem Solver must still document the resolution attempt on Attachment I, and then the inmate and the Problem Solver must sign and date the form. At this time, if the inmate chooses, he/she may now proceed to Step Two (the formal grievance) using this same form (Attachment I). See procedures for Step Two below.
11. If the designated Problem Solver (or substituted person to resolve the issue such as a medical or mental health staff member) has failed to contact the inmate and attempt resolution of the complaint or failed to return Step One (the grievance) within the designated three working days, the inmate may proceed to Step Two, the formal grievance, without the completion of Step One. In that instance, Step Two, the formal grievance, must be filed no later than six (6) working days from the original submission of the Unit Level Grievance Form pursuant to Step One: this allows three (3) working days to wait for a response to Step One, and three (3) working days to initiate Step Two. (These are not three (3) additional days, i.e., if the Problem Solver returns Step One on the day it was submitted, the inmate has only three (3) working days from receipt of that response to file Step Two.) The inmate will submit a copy of his/her Unit Level Grievance Form using the pink or yellow copy, whichever is most legible, that he/she retained following the instructions for Step Two.

- a. All medical issues will be coded 600 by the Unit Grievance Officer. All mental health issues will be coded 630.
 - b. The Medical and Mental Health Departments will assign more specific type codes as indicated on Attachment VII into eOMIS when completing the response to the grievance.
4. The Grievance Officer shall then transmit an Acknowledgement or Rejection of the Unit Level Grievance Form (see Attachment II) to the inmate within five (5) working days after receipt. No acknowledgment is required if a written response to the grievance, signed by the Warden, Health Services Administrator, or Mental Health Supervisor or designees, can be provided within five (5) working days.
5. The Grievance Officer will note whether the grievance is medical or mental health related. Such Step Two medical or mental health grievances will be forwarded as soon as possible, and in no event later than five (5) days, to the appropriate medical or mental health department for investigation and response to the inmate.
 - a. If the grievance is medical in nature, it is forwarded to the Health Services Administrator (HSA) at the Unit Medical Department for a response. The HSA, or designee, should not respond to a grievance that is alleging misconduct by that individual unless the inmate still has another step in the grievance process to challenge the conduct, or the inmate is alleging indirect misconduct (failure to act). Where the inmate is alleging direct misconduct (such as physical abuse or retaliation) by the HSA, then the appropriate Regional Manager will respond after the medical department has appropriately logged the resolution.
 - b. If the grievance relates to mental health services, the supervisor of mental health services for the facility, or designee, will answer the grievance. The Mental Health Supervisor, or designee, should not respond to a grievance that is alleging misconduct by that individual unless the inmate still has another step in the grievance process to challenge the conduct, or the inmate is alleging indirect misconduct (failure to act). Where the inmate is alleging direct misconduct (physical abuse or retaliation) by the Mental Health Supervisor, then the Mental Health Administrator at Central Office will respond after the mental health department has appropriately logged the resolution.
6. The Inmate Grievance Worksheet (see Attachment VIII) may be used by staff when investigating grievances.

G. Steps to Appeal the Unit Level Grievance Decision:

After receiving a response from the Warden, the Health Services Administrator (HSA), the Mental Health Supervisor, or applicable designee, if the inmate is not satisfied, he or she may appeal to the appropriate Chief Deputy/Deputy/Assistant Director who will attempt to resolve the matter or assign an appropriate staff member to do so. In this instance, the appeal must be filed within the five (5) working days from the date of the response.

1. The appeal must be written in the space provided above the signature line on the original Warden/Center Supervisor's Decision Form (Attachment III), the Health Services Response to Unit Level Grievance Form (Attachment IV) for medical or mental health grievances entitled Inmate's Appeal (see Attachment III and IV), or the Acknowledgement or Rejection of Unit Level Grievance (Attachment II). Only what is written in the space provided above the signature line for appeal will be considered part of the grievance appeal. Except for a PREA grievance, additional sheets should not be attached and will be returned to the inmate upon receipt of the appeal or as soon as practical. **ONLY THE STATEMENT IN THE SPACE PROVIDED ABOVE THE SIGNATURE LINE WILL BE MAINTAINED AND CONSIDERED PART OF THE APPEAL SUBMISSION.**
2. To appeal the inmate must include the original (no photocopies) Unit Level Grievance Form (Attachment I), which describes the matter originally grieved, and either the Warden/Center Supervisor Decision Form (Attachment III), the Health Services Response to Unit Level Grievance (Attachment IV), or the Acknowledgement or Rejection of Unit Level Grievance (Attachment II) if the inmate is asserting the grievance was improperly rejected or if the inmate did not receive a response or extension within the applicable timeframe. The inmate should deposit the appeal into the designated grievance box; or submit it to a Staff Member if the inmate's assignment prevents access to the grievance box. If these two (2) pages are not submitted with the inmate's appeal portion completed, the appeal may be returned to the inmate as rejected.

To complete the appeal, the inmate must state a reason for the appeal, and must date, sign, and write the inmate's ADC number on the attachment being appealed.

Do not list additional issues, requests, or names which were not a part of the original grievance, as those will not be addressed.

3. The Chief Deputy/Deputy/Assistant Director may process a grievance appeal not meeting the criteria set forth above when necessary for the

extension can be granted only with the approval of the Chief Deputy/Deputy/Assistant Director.

9. The entire grievance procedure should be completed within seventy-six (76) working days unless a valid extension has been executed, or it can be documented that unforeseen circumstances have occurred.
10. Release of the inmate from custody will normally terminate his or her grievance, unless the parties are under court order to exhaust remedies or the grievance highlights a problem that needs to be addressed at the discretion of the Chief Deputy/Deputy/Assistant Director, or designee.

H. Remedies

A grievance with merit will be afforded a reasonable range of meaningful remedies.

1. The responsible authority will review the conditions, policies or practices grieved and take appropriate action.
2. When a higher authority than the responding authority must authorize appropriate action, the lower authority shall note its agreement or disagreement with the inmate and transmit the completed grievance form to the higher authority with notice to the inmate.
3. The Division is to encourage the resolution of grievances found to have merit involving property losses, confiscations or forfeitures through the return of the property or replacement.
4. Errors in record keeping may be corrected and action by the staff or Classification Committees may be modified as appropriate.
5. No grievance should be discussed between or among employees and inmates except as necessary to obtain statements or to resolve the issues.
6. No employee should respond to a grievance that is alleging misconduct by that employee against the inmate unless (a) the inmate still has another step in the grievance process to challenge the conduct, or (b) the inmate's allegation was of indirect misconduct (conduct by omission). Where the inmate is alleging direct misconduct (such as physical abuse) by the employee, the employee shall not respond to the grievance. No employee may respond to a grievance that is alleging sexual harassment or sexual abuse by that employee against the inmate.

- c. If the formal grievance is regarding a health issue, but exceeds the inmate's limit for weekly submission, the grievance officer will note at the top of the grievance form "EXCEEDS WEEKLY LIMIT." The formal grievance will then be forwarded to the medical or mental health department to determine if an emergency exists. If the medical or mental health departments determine the grievance to be an emergency, the Health Services Administrator or Mental Health Supervisor will ensure that prompt action is taken to resolve the issue; however, a written response to the inmate is not required. If neither the medical nor mental health departments determine the grievance to be an emergency, it will be noted at the top of the grievance form, "not an emergency" beside the "EXCEEDS WEEKLY LIMIT" statement, dated and signed by the Health Services Administrator or Mental Health Supervisor and returned to the Grievance Officer for filing.
- d. If a formal grievance is a duplicate of one previously submitted by the inmate with regard to the staff member named, the date of the incident, and the subject of the grievance, the duplicate grievance will be logged into eOMIS, the inmate will be sent a Rejection of Grievance on Attachment II, and note at the top of the grievance form as "Duplicate of _____" and the earlier grievance number will be filled in the blank; the duplicate will be returned to the inmate with the Attachment II and counted as one of the inmate's weekly submissions.
- e. If the duplicate grievance is regarding a health issue, the grievance officer will forward the logged grievance and Rejection of Grievance Attachment II to medical or mental health to determine if a response is necessary or an emergency exists. If necessary, the Health Services Administrator or Mental Health Supervisor will ensure that prompt action is taken to resolve the issue, and if not, the medical or mental health staff will note at the top, "no response necessary on duplicate," date and sign it, and return both the grievance and Rejection of Grievance Attachment II to the inmate.

2. Frivolous and Vexatious (Provoking or Harassing) Use of the Procedure

- a. A frivolous or vexatious submission at any step will be logged and returned to the inmate with a Rejection form (Attachment II or Attachment V) and counted as one of the inmate's weekly submissions.
- b. A submission is frivolous when it is clearly insufficient on its face to allege an issue or concern and is readily recognizable as devoid of merit and insufficient for resolution or appeal.

L. Records

1. Each designated administrator at each level of response shall collect and systematically maintain records regarding the filing and disposition of grievances. These records will be maintained pursuant to the Division's record retention policy in either hard copy or in a retrievable form, as well as in the inmate's electronic record, and shall be available for inspection as required by law.
2. At a minimum, such records shall include aggregate information regarding the numbers, types and disposition of grievances, as well as individual records of the dates and reasons for each disposition at the formal grievance (Step Two) and appeal stages of the procedure and shall be logged in the electronic offender records system. Such records shall be preserved in accordance with the policy regarding records retention.
3. Records regarding the participation of an individual in grievance proceedings shall not be available for review by any inmate other than the grievant.
4. Grievance records, including statements and testimony provided during the process, are confidential and are not available to inmates. Division personnel other than those directly involved in the grievance process may not have access to the information, unless the person's job requires access to such records.
5. Except as otherwise provided by Arkansas law, grievance records will not be available to non-departmental personnel other than those representing the Division of Correction or providing services such as imaging or destruction of records under an agreement with the Division of Correction.
6. No entries concerning grievances, or an inmate's participation in a grievance proceeding through testimony or submission of evidence, shall be recorded in the inmate's paper institutional file.
7. Only those positions authorized by the appropriate Chief Deputy/Deputy/Assistant Director will have access to the Grievance Tracking Program.

M. Evaluation

1. Monthly, quarterly and annual reports may be generated from the tracking system.
2. Records of staff efforts at problem solving may be considered by supervisors evaluating the performance of staff.

UNIT LEVEL GRIEVANCE FORM**Attachment I**

Unit/Center _____

Name _____

ADC# _____ Brks # _____ Job Assignment _____

____ (Date) STEP ONE: Informal Resolution

____ (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: _____

____ (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm; emergency grievances are not for ordinary problems that are not of a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? _____ If yes, circle one: medical or mental
BRIEFLY state your one complaint/concern and be specific as to the complaint, **date**, and place, name of personnel involved and how **you** were affected. (Please Print):

Inmate Signature _____

Date _____

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.**THIS SECTION TO BE FILLED OUT BY STAFF ONLY**This form was received on _____ (date), and determined to be **Step One** and/or an Emergency Grievance ____ (Yes or No). This form was forwarded to medical or mental health? (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____**PRINT STAFF NAME (PROBLEM SOLVER)** _____**ID Number** _____**Staff Signature** _____**Date Received** _____Describe action taken to resolve complaint, including **dates**:

_____**Print and Sign Staff Name & Date Returned** _____ **Inmate Signature & Date Received** _____This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? ____ (Yes or No).

Staff Who Received Step Two Grievance: _____ Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK – Inmate Receipts; **BLUE**-Grievance Officer; **ORIGINAL**-Given back to Inmate after Completion of Step One and Step Two.

Attachment III

INMATE NAME _____ ADC# _____ GRIEVANCE # _____

WARDEN/CENTER SUPERVISOR'S DECISION

Signature of Warden/Supervisor or Designee

Title

Date

INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five working days as per policy by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director. Keep in mind that you are appealing the decision to the original complaint. Do not list additional issues, which are not a part of your original grievance, as they will not be addressed. Your appeal statement is limited to what you write in the space provided below above.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE?

Inmate Signature

ADC#

Date

If appealing, please submit both the Unit Level Grievance Form (Attachment I) and the Warden's Decision (Attachment III)

Acknowledgment of Grievance Appeal, or Rejection of Appeal

TO: Inmate _____ ADC # _____

FROM: _____ TITLE: _____

RE: Receipt of Grievance Appeal # _____ DATE: _____

Please be advised your Appeal dated _____ was received in my office on _____

The Chief Deputy/Deputy/Assistant Director will answer this appeal by _____,
OR,

Your grievance appeal is being returned pursuant to the Administrative Directive on Inmate Grievances
 due to one of the following:

_____ The time allowed for appeal has expired.

_____ The matter is non-grievable and does not involve retaliation.

_____ Request disciplinary action against employee, contractor, or volunteer

_____ Claim for monetary damage

_____ Parole and/or Release matter

_____ Transfer

_____ Job Assignment (Unrelated to Medical Restriction)

_____ Disciplinary matter

_____ Matter beyond the Division's control and/or matter of State/Federal law

_____ Involves an anticipated event

_____ Publication

_____ You did not send all the proper Attachments:

_____ Unit Level Grievance Form (Attachment I)

_____ Warden's/Center Supervisor's Decision (Attachment III); or Health Services
 Response (Attachment IV for Health Issues Only)

_____ Acknowledgement and/or Rejection form (Attachment II)

_____ Step Two was appropriately rejected

_____ Did not give reason for appeal in space provided for appeal

_____ Did not complete Attachment III or IV by signing your name, ADC #, and/or the date

Attachment VI

INMATE NAME _____ ADC# _____ GRIEVANCE # _____

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

Arkansas
State Claims Commission
NOV 13 2023

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SIGNATURE

DATE

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

GRIEVANCE TYPE CODES

Attachment VII (Page 2)

609	Medical Classification	707	Retaliation/Harassment – Use of the Grievance Process
610	Hearing	708	Retaliation/Harassment – Access to Courts Rights
611	Housing conditions (medical reasons)	709	Notary Services
612	Chronic Care	710	Access to Grievance Forms
613	Chronic Care not seen	711	Storage of Legal Materials
614	Chronic Care rx's not prescribed	712	Legal Mail
615	delete	713	No Response to Grievance
615	Orthopedic	714	Other Legal Matters
616	Sick Call no security escort	715	No Further Action is Necessary(NFAN)
617	Sick Call not seen timely	716	Freedom of Information Act (FOIA)
618	Sick Call referred not seen	717	Multiple Issues Grieved
619	Other	718	Welfare
620	Dental	719	Copies Made
621	Dental Prosthetics	720	Retaliation – other
622	Medical Appointments (outside not otherwise specified)	721	Loss of Property
623	Surgery		
630	Mental Health	800	Complaints Against Staff
631	Mental Health Appointments	801	Physical Abuse
632	Mental Health – Medication side effects	802	Verbal Abuse
633	Mental Health – Housing	803	Other Complaints Against Staff
640	Medication not given	900	Other
641	Medication prescribed	901	Good Time
642	OPM medications	902	Furlough
643	Medication not ordered	903	Other Complaints Against Inmates/Cellmate
644	Medication error	904	Time Computation
645	Medication pharmacy error	905	Hobby Craft
650	Co-pay	906	Religion
651	Lab	907	Parole Matters
652	X-ray	908	Discrimination (Race, Religion, Sex, etc).
653	Treatment call	909	Name Change
654	Informal resolution not answered	910	Urine Testing
655	Consults	911	Work Release
		912	Maintenance
700	Legal	913	Grieving for Another Inmate
701	Access to courts	914	Detainer Removed
702	Indigent Inmate Supplies	915	PREA
703	Law Books/Pages		
704	Law Library		
705	Legal Visits with Inmate		
706	Other Legal Visits		

810-5

Attachment IX

GRIEVANCE WAIVER

TO: _____ DATE: _____

FROM: _____ SUBJECT: _____

I, _____, ADC# _____, do hereby agree that grievance number _____, dated _____, has been resolved/and/or, I no longer want to pursue this matter. This decision is voluntary and made without threats or coercion of any type.

Inmate Signature

Date

Witness Signature

Date

12. disputed on Respondents (Ex. A) 'complaint', Claimant stated as his claim - "State Employee Andrea Culclager did not do a proper investigation that was owed to the Claimants redress due to his Conditions of Confinement issue brought to her office. Claimant clearly notified her office of state contractors going against their own policy / practices as evidenced (3-4) shown in police report (1) knock reply from Westpath Employee Mrs. Holmes at [REDACTED] request. Arkansas Code 004.03.1-835 as well as Arkansas Code § 12-27-103 cover the duties and policies vested by the state to A.D.C. officials which protects inmates redress attempts for conditions relating to their confinement and to the care or violations at that care". Claimant's only defendant named in this claim is State Employee Andrea Culclager.

13. disputed. Claimant only asserted a Liability towards A.D.C. Employee A. Culclager in her negligence in her duty to investigate Claimants Grievance issues.

14. Disputed. Respondant relying on Evidence outside the claims Commission's Jurisdictional purview is irrelevant to the current claim asserted to the Commission under Sovereign Immunity proper Assertion by Claimant by a negligence claim only.

15. disputed. 'Res Judicata' under Smith v. Johnson 779 F.3d 862 (8th Cir., 2015)
Claimant only asserted negligence in his claims.

16. disputed. Claimants 'Conditions of Confinement' envelope all aspects of his environment in prison as Eden in his Grievance Procedures and the State Actor Employees not doing investigations of his grieved issues see — Remondants Ex. A, Page 2 of Arkansas State Code § 12-27-103(III) Policy —
"It is the policy of the Board of Corrections and Community Punishment that offenders are provided an opportunity to submit grievances regarding Policy, Conditions, incidents, or actions related to incarceration / confinement which directly impact them."
It's the States own Policy, vested by the Board of Corrections which vested A.D.C and its Policy the responsibility of the prisoners (claimants) 'Conditions of his Confinement' Rights to the grievance procedures opportunities, in 'terminology' to be used in the jurisdiction of the State Claims Commission's claims.

17. disputed. As claimant priorly Established in (12) proved this claim by
Respondent not a fact in this claim.

18. Disputed. see Following Res judicata and Prose papers.

Prose Claimants Claims

Plaintiff believes the District Courts rulings 'over-simplifies plaintiffs' Prose Complaint and fails as well to provide the broad, Liberal reading to a prisoner Complaint required under Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed 2d 652 (1972). As the Supreme Court unanimously held in Haines, a prose complaint, "however ineptly pleaded," must be held to "Less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 520-21, 92 S.Ct. at 596 (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 - S.Ct. 99, 102, 240 Ed. 2d 80 (1957)). See also Estelle v. Gamble, 429 U.S. 97, 106, 97 - S.Ct. 285, 292, 50 L.Ed 2d 251 (1976).

Prose Verified Complaints -

"(A) Verified Complaint is the equivalent of an affidavit for summary - Judgement Purpose" - Williams v. Adams, 935 F.2d 960, 961 (8th Cir. 1991).

In the Eastern District of Arkansas, In ADC v. Hobbs, case no. 5:14-cv-314 JAH/BD - (E.D. Ark Sep. 17, 2015) states; (starting on p.12); "Recently, however, The Eighth Circuit addressed the issue of whether a inmate's deliberate - Indifference claim is precluded by a prior action before the Claims Commission". Smith v. Johnson, 779 F.3d 867 (8th Cir. 2015). In SMITH, the trial Court dismissed an inmates Constitutional claims because he had previously brought an action involving the same underlying facts before the Arkansas Claims Commission. The Court of appeals reversed the trial Court's dismissal, holding that 'Claim preclusion' does not apply because the Claims Commission does not have jurisdiction to address a Constitutional claim against an ADC officer sued in his individual capacity.

Because, The Arkansas Claim Commission has 'jurisdiction' only over those claims which are 'barred' by the doctrine of 'Sovereign Immunity' from being litigated in a Court of general jurisdiction, the "Claims Commission was the only forum in which [The inmate Plaintiff] could bring his claims against the State" - Id at 870.

Sovereign Immunity did not bar the inmate plaintiff's claim against the officer in his individual capacity, so the Claim Commission lacked jurisdiction over that claim for the Constitutional issues.

The Eighth Circuit also explained that "to invoke preclusion a defendant must establish not only that a claim arises from the same facts, but that the same issue was decided in the prior proceeding". Id at 871. (Emphasis in Original). Because the inmate plaintiff in Smith asserted only a negligence claim before the Claims Commission, he was not precluded from bringing a 'deliberate - Indifference' claim in a Section 1983 Lawsuit.

In Smith, the district Court thought the doctrine of 'issue preclusion' barred Smith's Actions Against Johnson. Issue preclusion bars the relitigation of an issue that was 'actually litigated in a prior action and was determined by, and essential to, a valid and final judgement'. Deer Mt. Judea Sch. Dist. v. Kimbrell, 2013 Ark. 393, 430 S.W. 3d 29, 39 (2013). Applying that doctrine the district Court ruled that Smith was precluded from bringing a claim

"based on the same facts that were litigated and decided against him in the Arkansas Claims Commission.

To invoke 'issue preclusion', however, a defendant must establish not only that claim arises from the same facts, but that the same issue was decided in the prior proceeding. Estate of Gaston v. Ford Motor Co. (In re Estate of Gaston), 320 Ark. 699, 898 S.W. 2d. 471, 473 (1995). The Arkansas Supreme Court requires a party invoking issue preclusion to establish that "the precise issue" was decided in the first proceeding, Smith, 683 S.W. 2d at 936, and interprets "very narrowly" whether an issue was previously litigated. In re Estate of Gaston, 898 S.W. 2d at 473.

One claim involves alleged 'Criminal Recklessness' - where the defendant must - both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists', and... also draw the inference', the other involves 'alleged intentional wrongdoing' (negligence of the official).

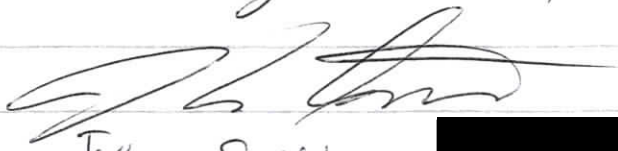
"The theories of negligence and intentional tort are contradictory and mutually exclusive". Hockensmith v. Brown, 929 S.W. 2d 840, 845 (Mo. Ct. App. 1996). Accordingly, "There is generally no claim of negligence that flows from intentionally tortious conduct". BP Chem. Ltd. v. Jiangsu Sopo Corp., 285 F.3d. 677, 685 (8th Cir. 2002).

The doctrine of claim preclusion in Arkansas applies to decisions of administrative agencies like the Claims Commission, Craven v. Fulton Sanitation Serv., Inc., 361 Ark. 390, 206 S.W. 3d 842, 844 (2005), and it "bars not only the relitigation of claims that were actually litigated in the first suit, but also those that could have been litigated". Jayel Corp. v. Cochran, 366 Ark. 175, 234 S.W. 3d 278, 281 (2006). (Thus, Joshua Stacker is simultaneously pursuing both claims at the same time in Actions). But the doctrine does "not bar a subsequent action where a party was actually prohibited from asserting a claim in the earlier action." Cater v. Cater, 34 Ark. 627, 846 S.W. 2d. 173, 176 (1993).

The restatement of Judgements, which has been followed by the Arkansas Courts in other respects, e.g., Ruth R. Rammel Revocable Trust v. Roane, 284 Ark. 568, 683 S.W. 2d. 935, 936 (1985), Likewise provides that Claim preclusion is not applicable here "The plaintiff was unable to rely on a Certain theory of the Case to seek a Certain remedy or form of relief in the first action because of the Limitations on the Subject Matter Jurisdiction of the Courts... and the plaintiff desires in the Second action (or subsequent) ~~to~~ To rely on that theory or to seek that remedy or form of relief." Restatement (second) of Judgements § 22(1)(c) The Restatement reasons that "It is unfair to Preclude (the plaintiff) from a Second action in which he can present those phases of the Claim which he was disabled from presenting in the first." Id. art. C (Quoted from Smith v. Johnson 779 F.3d 867 (8th Cir. 2015) (which reversed the district court findings and recommended for further proceedings)).

As Quoted from the Eighth Circuits Citation from Smith, 'The States Sovereign Immunity, Barring Plaintiffs Bringing state negligence claims,' would be unfair 'to preclude from action the claim against the states negligence in the state claim Commission. As Claimant simultaneously are bringing separate claims. The Respondent, nor claims Commission has jurisdiction on A suits 'deliberate - Indifference claims, similar Case details or not, according to the Eighth Circuits precedent Found in Smith v. Johnson 779 F.3d 867 (8th Cir. 2015).

Respectfully Submitted,


Joshua Stockton

Dated 11-09-2023

Verification - I hereby verify the Facts and statements are true to the best knowledge available to me and I believe the Evidence to be true.

Sworn under OATH



19. disputed. Grievance [REDACTED] 23-00129 AT the claimant inmates Unit Level, as well as on Appeal To the Deputy Director Andrew Culchager, Failed to give claimant 'some relief for the actions complained of', thus made unavailable his Administrative Remedies according to the Supreme Court in Booth v. Churner, 532-U.S.-731, 738 (2001) of which, the Eighth Circuit in Smith v. Andrews, 21-3356 (8th Cir. - July 26, 2023) is on the following page. See also (claimants Exhibit 1)

Arkansas
State Claims Commission

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The Eighth Circuit in Smith v. Andrews, 21-3356 (8th Cir. Jul. 26, 2023) on the issue of

The PLRA's Exhaustion requirement said, (Page 5), "In Ross, the Supreme Court ended a Judge-made exception (the 'special circumstances' exception) to the PLRA's Exhaustion requirement. Ross, 578 U.S. - at 638-39. In doing so, the Court emphasized the PLRA's mandatory language. Id. at 638 -

("As we have often observed, that language is 'mandatory': An inmate 'shall' bring 'no action' (or said more conversationally, may not bring any action) absent exhaustion of available

administrative remedies." (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006))). However, the Court

also explained that the PLRA contains "its own, textual exception": "[A]n inmate is required to exhaust those, but only those, grievance procedures that one (available, i.e.,) 'capable of use';

obtain 'some relief for the action complained of'. Id. at 642 (quoting Booth v. Churner, 532 U.S. 731, 738 (2001)). But "to state that standard, of course, is just to begin; Courts in this

and other cases must apply it to the real-world workings of prison grievance systems." Id.

The Supreme Court then noted "as relevant here three kinds of circumstances in which an administrative remedy" may be unavailable. Id. at 643 (emphasis added). Those situations are

(1) when the procedure "operates as a simple dead end"; (2) when the administrative scheme is so opaque that it becomes, practically speaking, incapable of use; and (3) when prison

administrators deliberately thwart prisoner attempts to use the process. Id. at 643-44.

20. disputed. In Claimants Appellate Level in Exhibit 1 (of Claimants Exhibits upon Claim Filing) Evidences (on Left margin Arrow) that A.D.C Employee over medical grievances states "A review of your electronic medical records indicates you requested to review your medical records on April 12, 2023, March 31, 2023, - March 1, 2023, February 19, 2023 and February 9, 2023 and January 31, 2023. Documentation indicated you reviewed your medical records on April 18, 2023, March 3, 2023, and February 1, 2023. According to medical policy no. 850.00 "the medical record review will be limited to a singular session not to exceed 1 hour in duration. An inmate will be limited to one medical record review per month". Therefore, this appeal is without merit." (Signed Andrew Culclager, dated 6/23/2023).

which Claimant appealing all the way to the Appellate Level by A. Culclager - A.D.C Central office, gave the A.D.C Administrative Levels the appropriate chance to investigate and intervene prior to being subjected to a negligence claim of State Employee Andrew Culclager, fulfilling Johnson v. Johnson 385 F.3d 503 (2004). This Court has proper jurisdiction as Smith v. Johnson 779 F.3d 867 (8th Cir, 2015) Establishes proper jurisdiction of the State Claims Commission under Claimants Assertions of negligence in this Court, in Defendants official capacity.

21. disputed. claimant supplied the paper facts and evidence from the claims starting,

22. disputed. The Respondent and Defendant have failed to prove the same issue of negligence is already been asserted or adjudicated in this case, and is a material fact which is still in dispute, and should be tried.

23. disputed. claimant asserted negligence claims against State Actor Andrea Culclager in this state claims commission and is a proper jurisdictional venue for sovereign immunity protected (issue precluded), available to the claimant in Ark Code § 19-10-204 (3)(A) (West Supp. 2015) for monetary relief of claimant's claim due to state employees failures to adhere to their own policies. wherefore claimant opposes Respondent's motion to dismiss, and prays that Respondent's motion to dismiss act as their summary judgment motion and be denied and remanded for trial on the issues for disputed material facts of the claimant's opposition.

Respectfully Submitted,



Dated 11-08-2023

Arkansas State Claims Commission

Joshua Stockton ADO [REDACTED]

CLAIMANT

V.

Claim no. 240163, 240164, 240211, 240233, 240234

Arkansas Department of Corrections 240266, 240285, 240378

Division of Corrections

Respondent
Arkansas
State Claims Commission

NOV 17 2023

NOTICE OF APPEAL

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pursuant to Ark. Code ann. § 19-10-211 (supp. 1997), claimant Joshua —

Stockton Appeals to the General assembly For his appeal of this cited claim

against Defendants in their official capacities as STATE Employees.

The Arkansas state Claims Commission's denied all at one time, after claimant did

responses to Respondents motions for summary judgments and/or Motion for dismissals

of which claimant Responded to. The Claims Commission sent Correspondence's To claimant

That he had 15 days to respond to request a hearing After Notices were served

to Respondents Counsel, of which claimant did in Letter formats (incorporating

multiple claim numbers) in a response for claimant's wanting a trial. The

Claimant did Respond to Each Claim Notice and did put Attu: Mike Tucker in

his requests for trial Responses, all sent in prior to the 15 day response period of expiration. Inside one or more of these claim numbers have the response letters in their Records. All someone has to do is look for them! perhaps The General assembly will do so in their investigation of appellate to their Authority

This appeal of claims nos. 240163, 240164, 240211, 240233, 240234, 240266, 240285 - and 240328 are disputed. As claimant met criteria 1) and 2) on Exhibit 1

Claimant appeals to the General Assembly According to Ark. Code Ann. § 19-10-211 -

(2) (1).

under Oath sworn, and Respectfully Submitted -



Joshua Stockton

Dated 11-14-2023

Exhibit 1

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

September 6, 2023

Mr. Joshua Stockton (AD[C] [REDACTED])
[REDACTED]

RE: *Joshua Stockton v. Arkansas Division of Correction*
Claim No. 240164

Dear Mr. Stockton,

Please be advised that the Arkansas Division of Correction (the "Respondent") in the above-styled claim filed an Answer disputing liability. When liability is contested by the Respondent, you have two options:

- 1) You may request a hearing before the Arkansas State Claims Commission (the "Claims Commission") in writing within fifteen (15) calendar days from the date of this correspondence.
- 2) You may do nothing. If this office does not receive any communication from you within fifteen (15) calendar days from the date of this correspondence, your claim will be dismissed by the Claims Commission for failure to respond.

Please note that even if you request a hearing on your claim, the filing of a dispositive motion (such as a Motion to Dismiss or a Motion for Summary Judgment) by the Respondent could result in dismissal of your claim before hearing. The failure of a party to file a timely response is sufficient basis for the granting of a motion by the Claims Commission.

It is your responsibility to know when responses are due to any motions or other pleadings filed in your claim. It is also your responsibility to notify both the Claims Commission and the Respondent if you have a change in mailing address.

Sincerely,

Mika Tucker

ES: msscott

cc: Thomas Burns, *counsel for Respondent* (via email)