



Please print in ink or type

Arkansas  
State Claims Commission  
NOV 03 2014

D13.

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

RECEIVED

- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

Jimmy Frazier, #116550

Claimant

vs.

State of Arkansas, Respondent  
Dept. of Correction

Do Not Write in These Spaces			
Claim No.	15-0353-CC		
Date Filed	November 3, 2014	(Month)	(Day)
Amount of Claim \$	2,175.00		
Fund	DOC		

COMPLAINT

Failure to Follow Procedure,  
Negligence

Jimmy Frazier, #116550

(Name)

, the above named Claimant, of

POB 180, Brickeys, AR 72320

(Street or R.F.D. & No.)

(City)

(State) (Zip Code) (Daytime Phone No.)

County of

represented by

(Legal Counsel, if any, for Claim)

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

State agency involved: Arkansas Department of Correction / E.A.R.U. Amount sought: \$2,175 and Transfer

Month, day, year and place of incident or service: 11-15-2013 East Arkansas Regional Unit - ADC

Explanation: On 11-15-2013 at or around 2:30 pm while returning to my barrack (7-19) from lunch prayer. I was stopped by officer Buennett who was working - 8 barrack control. I was ask if another inmate had handed me something. Ofc. Buennett order me to give him what I was handed and I tried to explain to him that I didn't receive anything from the inmate. He then searched me and found nothing. He then started insisting that I must had swallowed what it was that I had. At this point I was ordered to stand on the wall while ofc. Buennett in hear Sgt. Allen of the situation. Sgt. Allen gave me a direct order to open my mouth and then searched me in which nothing was found. I was then ordered by Sgt. Allen to return back to my barrack, in which these action caused him to be Reprimanded for not following procedures in this form incident. After about thirty to forty minutes in the barrack I was called back out by Sgt. Lee and Cpl. Jones (male). I was informed by these two that per Major Connor I was to be locked up. I was further given information by these two (Sgt. Lee Cpl. Jones) of the issue. I was told that ofc. Buennett had written me an disciplinary, but they had read over it and they both ensured me that it was not written properly and it should not hold so just chill out. I was placed in custody and was assigned a cell in Isolation 2 that night under DCR status. I was on 3 Side that I was assigned to according to officer hadn't had a working phone for about two weeks. Nov 16 2013 inmate Walter A. McEulough #09061 was placed in my cell on DCR status. On Nov 22 2013 the person who issues out disciplinary summoned inmate McEulough his disciplinary. I ask him if he had one for me and he informed me that he hadn't seen one on me yet. On November 25 2013 around 3:30pm →

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 or No) when? (Month) (Day) (Year) to whom? (Department)  
and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? 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:

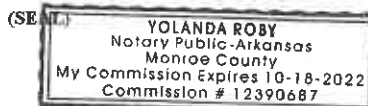
THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Jimmy Frazier  
(Print Claimant/Representative Name)

Jimmy Frazier  
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Brickeys AR  
(City) (State)



this 22nd day of October 2014  
(Month) (Day) (Year)

Yolanda Roby  
(Notary Public)

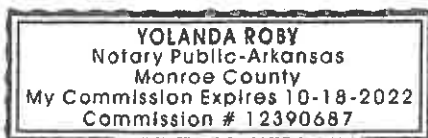
My Commission Expires:

10/18/2022  
(Month) (Day) (Year)

Sgt Allison came to our cell and informed me that he was sent per Major Connor to give me urine test. At this point I notice that Sgt Allison was filing a disciplinary and I asked him was that the one that was written on me, and it was. I asked if he would read it to me and he did. My Roommate was at the bars listening with me as Sgt Allison read it. And to my surprise it was as Sgt. Lee and cpl Jones had stated, he (cpl Burnett) had failed to put in the body of the disciplinary all the who, what, when, where and hows. Not stating what took or zone this incident happen was major grounds for dismissal. I was given the urine test in which I passed. The next day November 26 2013 per policy AD 10-13 would have been the day my said disciplinary would have elapsed and expired. My Roommate went to disciplinary court Nov 26 and no extension was given to me. At this point I should have been released from isolation and returned to population, but I was made to sit in isolation not being able to call home for Thanksgiving and my daughter's birthday. It wasn't until days after I had written my grievance concerning the issue that I was moved around 11:00pm 12-4-13 to a Max cell. I see that the things that took place was guised as proper, but was an fraudulent attempt to cover-up Major Connor trying to leave me in isolation as long as he can under the guise as a form punishment since the disciplinary would have been dismissed. Being that he ~~never~~ never had any intention in filing the disciplinary, for he knows the proper procedure in doing so. There was no investigation because it was said that a disciplinary was already <sup>written</sup>. And because of his (Major Connor) abuse of his office I ask that real corrective action be taken against him and that for my false imprisonment by him I be awarded \$2,175 for the days I spent in isolation and I be transferred from this unit.

SWORN TO and subscribed before me at Brickys AR  
(City) (State)  
on this 22nd day of October, 2014  
(Date) (Month) (Year)

Yolanda Roby  
(Notary Public)



MY Commission Expires

10/18/2022  
month Day Year

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State Claims Commission  
Arkansas

## UNIT LEVEL GRIEVANCE FORM (Attachment I)

Arkansas  
State Claims CommissionUnit/Center EARUName Jimmy L. Frazier

NOV 03 2014

ADC# 116550Brks # 2-52Job Assignment NONE

GRIEVANCE/RECEIVED

DEC 02 2014 RECEIVED

FOR OFFICE USE ONLY

GRV. #

Date Received:

GRV. Code #:

EAM13-0341312/04/1380311-29-13 (Date) STEP ONE: Informal Resolution

EAST AR REGIONAL UNIT

11-30-13 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)If the issue was not resolved during Step One, state why: There is still noJust Reason to hold me when by policy it has elapsed

(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 mentalBRIEFLY 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): This grievance is in regards to themalicious and unjustifiable treatment that has been strategically heap upon me by Major Connors and L.T. Williams in that they with intent purposely alienated me from the proper procedural step given to all under the provisions due process of Law Act. These Rules and Regulation (AR 831/AD 13-10 AR 017 AR 225 has been set into place to help maintain Fairness and Justice from blatant Form of partiality. ON Nov 15 2013, I was placed in isolation 2-52 on DCR status for an alleged rule violation. In Reference to AR 831/AD 13-10 which clearly states that No disciplinary written will be heard after seven business days except pursuant to an authorized extension. As of now I have not received an disciplinary and the time to has elapsed, but I'm still been held under DCR status. For it seems to me as if these two have collaborated together in this nefarious scheme constructed and guise as a DCR status, but was indeed a way to Retribute their own form of punishment instead of holding fast to their pledged department policies & procedures. For I am forced to sit in isolation for no Just Reason, for all disciplinary action has expired which was brought against me.Jimmy Frazier

Inmate Signature

Date

11-29-13

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 11-29-13 (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:Sgt B. Woodard

Date

PRINT STAFF NAME (PROBLEM SOLVER)

ID Number

Staff Signature

11-29-13

Describe action taken to resolve complaint, including dates:

he stated that the disciplinary is still pending.

Date Received

11-29-13

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Staff Signature &amp; Date Returned

Jimmy Frazier11-29-13This form was received on 11-30-13 (date), pursuant to Step Two: Is it an Emergency? (Yes or No).

Staff Who Received Step Two Grievance:

Date:

Action Taken: forwarded

(Forwarded to Grievance Officer/Warden/Other) Date:

Date:

If forwarded, provide name of person receiving this form:

DISTRIBUTION: YELLOW &amp; PINK - Inmate Receipts; BLUE-Grievance Officer; ORIGINAL-Given back

Arkansas  
State Claims Commission

NOV 03 2014

BK03/0166L

Attachment III

IGTT410  
3GSINMATE NAME: Frazier, Jimmy L.ADC #: 116550FGRIEVANCE # AM13-03913

## WARDEN/CENTER SUPERVISOR'S DECISION

Inmate Frazier, you grieve on 11/15/2013, you were placed on DCR and you never received a disciplinary. Your complaint is noted. Documentation reveals a disciplinary was written on 11/16/2013 but dismissed on 12/03/2013 due to no extensions were issued for the disciplinary. Documentation also reveals you were released from DCR to Administrative Review on 12/04/2013 and reassigned to general population on 12/06/2013. I find your complaint with merit and corrective action will be taken.

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 by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director along with the Unit Level Grievance Form. Keep in mind that you are appealing the decision to the original grievance. Do not list additional issues, which are not 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.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE? *Firstly, Warden Burl states that corrective action will be taken, but as of now I know of none. I was taken from my position of being my class one and a new job assignment, and there is no way to correct to what I was placed in isolation on your birthday, Thanksgiving and daughter birthday without being in contact with them through phone or visitation. I was taken away from the little freedom I did have and was placed illegally in isolation with a mock disciplinary as punishment, according to AD 13-10 inmate disciplinary Manual page (35) under sanctions it states any staff that violates this policy will be subject to disciplinary action which may include termination. I believe termination is best for both parties and any/all proper relief giving me regards to Ford vs Borden USDC Case No 1:07-cv-11457-JGD 2012 WL 2262532*

Jimmy Frazier

Inmate Signature

ADC#

Date

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DEC 23 2013

INMATE GRIEVANCE SUPERVISOR  
ADMINISTRATION BUILDING

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Arkansas  
State Claims CommissionIGTT430  
3GD

NOV 03 2014

Attachment VI

INMATE NAME: Frazier, Jimmy L.

ADC #: 116550


GRVANCE# EAM13-03913  
RECEIVED**CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION**

Your complaint is on 11/15/2013; you were placed on DCR but never received a disciplinary.

After reviewing your appeal and all supporting documentation, I find records indicate you were written a disciplinary on 11/16/2013 but dismissed on 12/3/2013 due to no extension was issued for the disciplinary. Due to the evidence submitted in your appeal, I concur with the Warden's response.

Appeal denied

By way of this response, I will instruct the unit Warden to forward a copy of Corrective Actions taken to my office.

  
Director1-28-2014  
Date

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Arkansas

State Claims Commission

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- \* 1. Prior to the major disciplinary hearing, the Chief Security Officer will review all disciplinaries and may do one of the following:

- a. Forward the disciplinary to the Disciplinary Hearing Officer with his initials on the report.
- b. Reduce it to a Minor Disciplinary.
- c. Dismiss the charges and file the disciplinary report as a matter of record.
- d. Convert the minor disciplinary to a major disciplinary.

Regarding provision (b) and (c) above, the Chief Security Officer will consult with the charging person on any decision which results in dismissal or reduction. In the event the Chief Security Officer dismisses the disciplinary report(s), a copy of the dismissed disciplinary shall be forwarded to the Assistant Warden for Security or Center Supervisor for filing as a matter of record. Copies of these reports are not to be included in the inmate's permanent jacket. Reasons for such dismissals should be documented on the face of the disciplinary report(s).

2. The Chief Security Officer may set reasonable limitations on the number of inmate witnesses. The Chief Security Officer will document the reason(s) for the limitation on the Major Disciplinary Form (F-831-1) under "Witness Statements." In the event that a limit (usually five) is placed upon inmate witness statements, the same limit must be applied to statements taken from staff.
3. May exclude any witness(es) who were not present at the time of the incident and inquire from the offender what testimony from that witness would reveal.

#### D. General Considerations

1. The Major Disciplinary Form (F-831-1) will be completed for major disciplinary reports against an inmate and will include specific details of the rule infraction alleged against the inmate. At a minimum, the details shall include who, what, when, where, how, and why the charge is brought. The charging person should be the staff with the most knowledge of the event. Once the disciplinary report is written, the charging person may seek assistance from others for purposes of correcting any mistakes in grammar or

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- \* 3. The Disciplinary Court's objective shall be to hear all disciplinary actions within seven (7) business days of the disciplinary. No disciplinary will be heard after seven business days excluding legal holidays from the disciplinary except pursuant to an authorized extension.

For example, an inmate receiving a disciplinary on Tuesday at 9:00 a.m. or 10:00 p.m. should be tried by 6:00 p.m. the following Thursday assuming there were no holidays. Disciplinary should be tried between 6:00 a.m. and 6:00 p.m. whenever possible.

4. Upon convening to consider cases of inmate violations of rules and regulations, the Major Disciplinary Court shall cause the inmate to appear before it unless the inmate waives in writing or through behavior. In the event that an inmate wishes to waive his/her appearance, a waiver form will be completed and a copy provided to the charged inmate and must be reviewed by the Warden/Center Supervisor or designee. If the inmate waives his/her right to appear and is found guilty, he/she cannot appeal the decision.
5. Once the inmate is present before the Major Disciplinary Court, the recorder will be turned on, the reading noted, the time and date entered, and the charged inmate identified by name and ADC number.
6. The Disciplinary Hearing Officer will identify himself/herself in the presence of the inmate and inform the inmate that this is, in fact, a Major Disciplinary Court Hearing.
7. The Disciplinary Hearing Officer will scrutinize the disciplinary report to determine whether all time limits and procedural requirements have been met.
8. It must be determined whether all allowed witness statements requested by the inmate and all other items of physical or documentary evidence are present before the court. The court may summon any and all additional witnesses it deems necessary. Witness statements may be taken in writing, orally, or by telephone.

All written witness statements, whether taken prior to the hearing or obtained at the request of the court, must be read into the record and a copy included in the disciplinary record. In cases where there are numerous witness statements and there is no substantial difference between the statements, one statement may be read into

NOV 12 2014

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JIMMY FRAZIER (ADC 116550)

CLAIMANT

V.

NO. 15-0353-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**ANSWER**

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

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



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

**CERTIFICATE OF SERVICE**

I certify that a copy of this pleading has been served this 10 day of November, 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Jimmy Frazier (ADC 116550)  
East Arkansas Regional Unit  
PO Box 970  
Marianna, AR 72360-0970



LISA MILLS WILKINS Ark. Bar #87190



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

JIMMY FRAZIER (ADC #116550)

Arkansas  
State Claims Commission CLAIMANT

V.

NO. 15-0353-CC

APR 24 2015

ARKANSAS DEPARTMENT OF CORRECTION

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RESPONDENT

MOTION TO DISMISS

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

1. Claimant filed a claim for failure to follow procedure and negligence. He is seeking \$2,175.00. Claimant has failed to state a claim upon which relief can be granted under ARCP Rule 12(b)(6) and the claim should be dismissed.
2. Claimant was written a disciplinary due to Officer Barnett observing Claimant receiving something from another inmate after Jumah Prayer. When ordered to give the item to staff, he refused and placed it in his mouth. He refused the order to spit it out. The disciplinary was dismissed because it expired due to no extension being granted.
3. There was no violation of policy in issuing the disciplinary. The disciplinary was based on visual observation by Officer Barnett. It was properly dismissed when it had expired.
4. This is not a matter of negligence. Arkansas Code Annotated § 19-10-305(a) provides that: "Officers and employees of the State of Arkansas are immune from liability and from suit, except to the extent that they may be covered by liability insurance, for damages for acts or omissions, other than malicious acts or omissions, occurring within the course and scope of their employment."
5. The ADC does not carry liability insurance for the negligent acts of its employees. Further, nothing in Plaintiff's Complaints suggests that Defendants acted maliciously when they allegedly failed to protect him from the July 22, 2010 attack. Thus, Defendants Harris, May, Whalen, Golden, Banks, Meizner, Walker, and Jones are entitled to state statutory immunity from Plaintiff's negligence claim. See Williams v. Wade, Case No. 03-573, 2005 WL 1120255 (Ark. May 12, 2005) (unpublished opinion) (affirming the dismissal of a prisoner's claims because the prison officials were entitled to statutory immunity under Ark. Code Ann. § 19-10-305(a)); Fegans v. Norris, 89 S.W.3d 919, 924-25 (Ark.2002).
6. Both the United States and Arkansas Constitutions grant the State of Arkansas, and its subdivisions, sovereign immunity from suit. See Cooper v. St. Cloud State Univ., 226 F.3d 964, 968 (8th Cir.2010) (explaining that states are entitled to sovereign immunity, under the Eleventh Amendment of the U.S. Constitution, from pendent state law claims); Ark. Const. Art. 5, § 20 (providing that the State of Arkansas is entitled to sovereign immunity); Landsn Pulaski, LLC v. Arkansas Dept. of Corr., 269 S.W.3d 793, 795 (Ark.2007) (holding that the sovereign immunity granted by Ark. Const. Art. 5, § 20 extends to the Arkansas Department of Corrections). Thus, Plaintiff's pendent state negligence claim should be dismissed, with prejudice.
7. Respondent moves that the commission dismiss this claim. A motion to dismiss is proper when there are no facts upon which relief can be granted. ARCP 12(B)(6).

WHEREFORE, for the reasons and evidence above, the Respondent moves that the claim be dismissed.

Respectfully submitted,  
Department of Correction  
Office of Counsel

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

CERTIFICATE OF SERVICE

I certify that a copy of the above Motion to Dismiss has been served this 24 day of April, 2015, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

JIMMY FRAZIER (ADC #116550)  
EARU  
P. O. BOX 970  
MARIANNA, AR 72360-0970

Lisa Mills Wilkins  
LISA MILLS WILKINS Ark. Bar #87190

Before The Arkansas State Claims Commission

Jimmy Frazier (ADC#116550)

Claimant

VS

NO. 15-033

Arkansas  
State Claims Commission

ARKANSAS DEPARTMENT OF CORRECTION

MAY 06 2015

Respondent

Motion for Rebuttal

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Comes Now the Claimant, Jimmy Frazier #ADC116550, and for its Motion for Rebuttal state and responds as follows:

- (1) Respondent has stated on its Motion to Dismiss that Claimant has failed to state a claim upon which relief can be granted. Claimant has in good faith submitted with all hope that the truths that has been stated will be accepted for what it is. IN that within the body of the claim, clearness of the fact that Claimant has indeed stated how relief can and should be granted him with all other supporting document.
- (2) Claimant does not claim that a disciplinary was not written for the alleged rule infraction, but the theme of Claimant claim is that he was said to had been written up, but after He was placed on Det by Major Connor on Nov 15 2013 the proper procedural steps was not carried by Major Connor and LT. Williams which would have allowed me fair and equal protection under (ADC) Administrative Directives.
- (3) Respondent further states, "there was no violation of Policy in issuing a disciplinary. Claimant has clearly stated in his claim that never was an disciplinary issued to him and one would have to be issued in order for an extension to be processed.
- (4) Respondent also has stated that this is not a matter of Negligence. Claimant not only refute Respondent claim, but state that not only is this a matter of Negligence, but also of Major Connor and LT Williams failure in following procedure. They not only neglected their duties as sworn officers, but did not follow the procedure steps that has been set in place to maintain justice. Major Connors failure in processing the said disciplinary cause claimant to be detain beyond (ADC) AD 14-08.

(5) Claimant understand that Qualified immunity protect "all but the Plainly incompetent or those who knowingly violate the Law and their Challenged conduct violates "clearly established statutory Rights, Rules Laws and ADC's Mandated Policies and Procedures which a reasonable Person would have known at the time of the act. Respondents Major Connor and LT Williams have had years of experience in the process of disciplinarys. And for Major Connor intentionally failing to allow the disciplinary to take it's course through the system He held it at bay with malicious intent.

(6) Claimant see that the Respondent has brought forth Material and information that is foreign and nonapplicable to Claimant claim in that eight defendant was named that has no dealings with this claim and never did an attack happen in this claim. Also Respondent Never once made mention of the intended persons of Claimant claim which are Major Connor and LT. Williams.

(7) Claimant see that Respondent Motion to Dismiss was made in bad faith solely for the purpose of delay and to cause confusion in this case.

(8) Claimant Prays that the Commission deny Respondent Motion to Dismiss and that a hearing date be set, for Claimant has showed and stated a claim upon which relief can and should be granted.

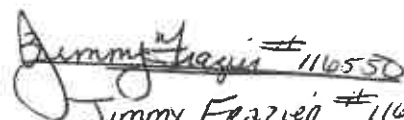
WHEREFORE, for the reasons stated and evidence submitted, Claimant ask that Respondent Motion to Dismiss be Denied

#### Certificate of Service

I certify that a copy of the above Motion for Rebuttal has been served this 4th day of May, 2015, on the below Respondent by placing a copy of the same in the U.S. Mail regular Postage to:

LISA Mills Wilkins  
P.O. Box 8707  
Pine Bluff, AR 71611

Respectfully submitted  
Jimmy Frazier #116550  
EARU

  
Jimmy Frazier #116550  
EARU  
P.O. Box 970  
MARIANNA, AR 72360

STAT CLAIMS COMMISSION DECISION  
OPINION

Amount of Claim \$ 2,175.00

Claim No. 15-0353-CC

<u>Jimmy Frazier, #116550</u> Claimant		<u>Attorneys</u>	
<u>vs.</u>		<u>Pro se</u> Claimant	
<u>AR Dept. of Correction</u> Respondent		<u>Lisa Wilkins, Attorney</u> Respondent	
<u>State of Arkansas</u>			
<u>Date Filed</u>	<u>November 3, 2014</u>	<u>Type of Claim</u>	<u>Failure to Follow Procedure,</u> <u>Negligence</u>

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-6 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 2-6 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing May 14, 2015

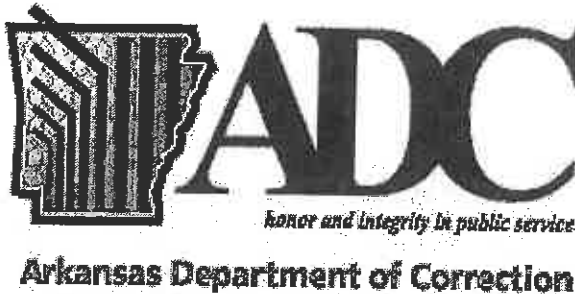
Date of Disposition May 14, 2015

<u>[Signature]</u>	Chairman
<u>[Signature]</u>	Commissioner
<u>[Signature]</u>	Commissioner

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

MAY 01 2015

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PO Box 8707  
Pine Bluff, AR 71611-8707  
Phone: 870-267-6999  
Fax: 870-267-6258  
www.adc.arkansas.gov

## ADMINISTRATIVE DIRECTIVE

**SUBJECT:** Disciplinary Court Review (DCR)

**NUMBER:** 14-08

**SUPERSEDES:** 13-112

**APPLICABILITY:** All employees and inmates of the Department of Correction

**REFERENCE:** AD on Administrative Segregation **PAGE 1 of 3**

**APPROVED:** Original signed by Ray Hobbs **EFFECTIVE DATE:** 01/17/2014

### I. POLICY:

It is the policy of the Department of Correction to provide safe secure housing to inmates who require a higher degree of physical control by virtue of being charged with a serious rule violation, and in the judgment of staff may become disruptive or be dangerous if left in the general population.

### II. EXPLANATION:

Such detention should not be punitive and should be used only when necessary to ensure the inmate's safety or good order and security of the institution. Documentation should be provided as to the reason for detention.

### III. DEFINITIONS:

- A. Disciplinary Court Review (DCR) – the confinement of an inmate in a segregated area until a disciplinary hearing is completed due to committing a disciplinary infraction.

IV. PROCEDURES:

A. Review

- \* 1. No inmate is to be placed on DCR unless a disciplinary is being considered. The Shift Supervisor or the highest-ranking officer on duty may place the inmate on DCR.
- \* 2. The Warden/Center Supervisor or designee must review an inmate's pre-hearing status within 72 hours, including weekends and holidays.
- \* 3. At no time will an inmate remain on DCR for more than 14 days.
4. An inmate may be removed from DCR and placed on an appropriate assignment only with the authorization of the Warden, Deputy/Assistant Warden, Chief of Security or designee.
5. If the disciplinary action is dismissed prior to a disciplinary hearing, the inmate must be released from DCR status and appropriately reassigned.

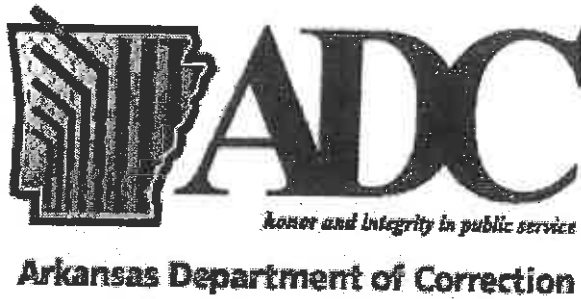
B. Privileges

1. Inmates on DCR status will be offered programs and services that, while not comparable in terms of freedom of availability in comparison with general population privileges, will generally include the following areas:
  - a. recreation
  - b. showers
  - c. crisis counseling
  - d. leisure and library services
  - e. in-cell education programs
  - f. religious counseling and materials
  - g. general, privileged and legal correspondence, phone calls and visitation
  - h. commissary
  - i. medical services

Arkansas Claims Commission

JUN 02 2015

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## ADMINISTRATIVE DIRECTIVE

**SUBJECT:** Body Cavity Searches for Contraband

**NUMBER:** 11-65

**SUPERSEDES:** 08-53

**APPLICABILITY:**

**REFERENCE:** AR 401 – Searches For and Control  
of Contraband

**PAGE 1 of 5**

**APPROVED:** Original signed by Ray Hobbs

**EFFECTIVE DATE:** 12/06/2011

### **I. POLICY**

Searches shall be conducted to prevent the introduction, concealment, or movement of contraband, and to provide for the safe, secure operation of the Arkansas Department of Correction.

### **II. DEFINITIONS**

- A. Body Cavity: Internal part of the body accessible from outside the body, i.e., mouth, ear, nose, vagina, or rectum, without surgical intervention.
- B. Contraband: Any item not authorized by ADC policy to be in the possession of an inmate or staff member.
- C. Dry Cell: A designated secure area equipped with a bed, lighting and proper ventilation, which has been modified to prevent the disposal of waste material or contraband.
- D. Reasonable Suspicion: Conclusions based on specific objective facts and rational inference which would cause a prudent and cautious person to



believe a particular individual at a particular time has concealed contraband in a particular place to be searched.

- E. Visual Search: Inspection of an individual that excludes touching the individual manually or with instruments.
- F. Non-Invasive Search: The use of radiology, sonogram, or fluoroscopic equipment to detect contraband within a body cavity.
- G. Body Cavity Search: The physical examination of a body cavity by trained medical staff for the purpose of ascertaining if contraband or any other foreign item has been introduced into a body cavity of an inmate. A body cavity search includes use of fingers or simple instruments, such as an oto-ophthalmoscope, tongue blade, short nasal speculum, and simple forceps.

### III. PROCEDURES

- A. Upon reasonable suspicion of an inmate introducing contraband or a foreign object into a body cavity, the staff member will place the inmate under constant staff observation, and will notify the Warden, or in the absence of the Warden, the Warden's designee.
- B. If there is reasonable suspicion that an inmate is in imminent danger due to introduction of a foreign object into a body cavity that could produce significant deterioration of the inmate's health, the medical staff will take the action necessary to prevent further harm to the inmate.
- C. In the absence of an indication of imminent danger to the inmate, the staff member will ask the offender to remove the object if the object is actually visible in a body cavity or if there is reasonable suspicion to believe that the offender has contraband in a body cavity and the object can be removed safely. The medical provider should consider use of an X-ray to determine the presence of a foreign body.
- D. A correctional officer of the same sex as the inmate will be present during a visual, invasive, or body cavity search to provide observation of the procedure and for the safety and security of the inmate and staff.
- E. If there is no confirmation of contraband or a foreign object after a visual search, the inmate will be requested to sign an informed consent prior to a non-invasive search of the inmate's body cavity by medical personnel. However, the inmate's consent is not required.
- F. Dry cell status is often appropriate when staff believe an inmate has ingested contraband. Ordinarily, when staff believe that a female inmate

has concealed contraband in her vagina, dry cell status is not the appropriate search method, since it is possible for her to thus conceal contraband for an extended period of time.

- G. Ordinarily, an inmate, of either gender, will not be able to conceal contraband in his or her anal cavity for an extended period of time.
- H. If there is no confirmation of contraband or a foreign object after a non-invasive search, or the inmate refuses to cooperate with a visual or non-invasive search, inmates suspected of placing contraband in a body cavity should be temporarily housed in a Dry Cell under the following conditions.
  - a. The confinement may be ordered by the Warden or designee based upon reasonable suspicion that the inmate has placed contraband or other foreign objects in a body cavity.
  - b. The inmate will be placed under constant observation by corrections staff.
  - c. The Dry Cell will be thoroughly searched prior to placement of the inmate in the Cell.
  - d. The inmate will be provided with toilet articles, clothing, and bedding.
  - e. The medical provider should consider offering natural laxatives, i.e., coffee, prune juice, etc.
  - f. The inmate will be provided with a means of collecting vomitus, feces, body fluids, or other items expelled from the body.
  - g. If confinement in the Dry Cell is to continue for more than 72 hours, it must be reviewed and authorized by the Warden or designee.
- I. If after a visual search, non-invasive search, and confinement in a Dry Cell, suspected contraband or foreign objects cannot be located, a Body Cavity Search is indicated for any inmate for whom there is reasonable suspicion that the inmate has concealed foreign objects in a body cavity in order to assess any harm to the inmate caused by the introduction of a foreign object or contraband, and to prevent further harm from occurring.
  - a. Staff shall solicit the inmate's written consent prior to conducting a body cavity search; however, the inmate's consent is not required.

- b. If the provider determines that probable harm to the patient or the provider is likely to result if the provider conducts a body cavity search, the provider will not conduct the body cavity search. Such cases may be referred to a community provider where removal by instrumentation, conscious sedation, or other technique is available which is not available in the correctional facility.
- J. The Warden or designee may request authorization to conduct a Body Cavity Search from the Deputy Director, Health and Corrections Programs, who is the only approval authority for a body cavity search to be conducted with consultation with the Regional Medical Director or ADC Legal Department as warranted. In the Deputy Director's absence from her or his duties, the designated authority to make Deputy Director, Health and Corrections Programs decisions will assume that authority.
- K. Body cavity searches will be conducted in private and will only be performed by a licensed medical professional acting within the scope of his or her license, i.e., a physician, mid-level practitioner, or registered nurse trained in body cavity search technique.
- L. If located, the contraband or foreign item may be removed immediately by medical staff, if such removal can easily be effected by use of fingers or a simple instrument.
- M. Disposition of contraband and/or foreign object recovered during a Body Cavity Search will be in accordance with AD 08-14 – Searches of Inmates, Unit Searches and Control of Contraband and AD 09-07 – Inmate Property Control.
- N. The person conducting the search will document the details of the search and results in the inmate's medical record.
- O. A report of the Body Cavity search, in the attached format, will be initiated and forwarded to the Warden or designee within twenty-four hours of completion of a body cavity search, with a copy provided to the Deputy Director, Health and Corrections Programs, and the Regional Medical Director.

STATE CLAIMS COMMISSION DECISION  
OPINION

Amount of Claim \$ 2,175.00

Claim No. 15-0353-CC

<u>Jimmy Frazier, #116550</u>	Claimant	<u>Pro se</u>	Claimant
vs.			
<u>AR Dept. of Correction</u>	Respondent	<u>Lisa Wilkins, Attorney</u>	Respondent
<u>State of Arkansas</u>			
<u>Date Filed</u>	<u>November 3, 2014</u>	<u>Type of Claim</u>	<u>Failure to Follow Procedure, Negligence</u>

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's May 14, 2015, order remains in effect.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's May 14, 2015, order remains in effect.

Date of Hearing June 11, 2015

Date of Disposition June 11, 2015

<u>[Signature]</u>	Chairman
<u>[Signature]</u>	Commissioner
<u>Bill Lamm</u>	Commissioner

Before The ARKANSAS State Claims Commission

Jimmy Frazier (ADC 116550)

VS

NO. 15-0353-CC

Arkansas Claims Commission

Claimant

ARKANSAS DEPARTMENT OF CORRECTION

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Respondent

MOTION FOR Reconsideration

COMES NOW the Claimant, Jimmy Frazier and for His Motion for Reconsideration and states and responds as follows:

1. IN Respondent's Motion for Dismiss it has stated that it is entitled to qualified or statutory immunity pursuant to Arkansas Code Annotated 19-10-305 (2).
- (2) Respondent's motion also state that Claimant was observed receiving something from another inmate and placed it in His mouth when ordered to give it to staff. Claimant refute Respondent claim that the disciplinary was not in violation, but indeed it was because ADC has had a long standing policy which dictates if such an incident does happen it is to be investigated before a disciplinary is written. The accused person must be placed on investigation status placed in a cell alone with NO running water, until a bowel movement is made and upon the completion of investigation then and only then is a disciplinary is suppose to be written (see AR 401, AD 11-65 ) Sgt. Allen was the zone supervisor at the time of the incident and he was written up for failure to follow the protocol for such a incident.
- (3) Respondent has asserted that this is not a matter of negligence. Again Claimant will declare his argument on the denial of his Procedural due process and the Neglection of Major Connor and LT. William in their Personal and official capacities, in that they know what action was warranted in this incident. According to Arkansas Department of Correction Administrative Directive - 13-10. This (AD) was established to ensure that Institutional Rules and regulations are enforced through an unbiased and prudent fact finder and provide appropriate due process throughout the disciplinary process. In which a part of such (AD's 13-10 11-65 and 14-0 has delegated Major Connor in helping ensuring that an inmate right to proper Procedural due process is granted him. Indeed.

(4) IN the body of AD 13-10 section VII subsection (C) which reads Responsibilities of the building or Field Make. Part I of subsection (C) reads Prior to the Major disciplinary hearing, the Chief Security officer will review all disciplinaries and may do one of the following: (a) Forward the disciplinaries to the Disciplinary Hearing officer with his initials on the report. (b) Reduce it to a minor disciplinary (c) Dismiss the charge and file the disciplinary report as a matter of record. (d) Convert the minor disciplinary to a Major disciplinary.

Another Provisional Remedies of this AD 13-10 within the same section VII subsection E(3) which states the Disciplinary Courts objective shall be to hear all disciplinary actions within seven business days of the disciplinary. No disciplinary will be heard after seven business day excluding legal holidays from the disciplinary except pursuant to an authorized extension.

The interpretation of these AD 13-10 11-65 and 14-08 is that Major Connor duties in dealing with my incident and disciplinary was to review both, in an investigation manner and if a disciplinary is written he is to review it sign it and allow it to be process. if he do not intend one of the other above mention.

(5) Major Connor and LT. Williams knew they went outside the scope and function of their offices when knowledge of the incident came before them. Instead of holding fast to the Procedural due Process of the above mention they allowed illegal action that is not in accordance with ADC AD'S 13-10 - 11-65 and 14-08 which would have allowed Claimant to receive his Procedural due Process. (See wood vs Strickland (Case#) 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 : Hayes vs Arkansas Department of Correction 72 F.3d 70

(6) Respondent stated Williams vs Wade and they hold fast to ARK code ANN 19-10-305(6) in this case it states The Statutory Protection is therefore applicable unless appellee has pled sufficient facts to support a finding that the acts omissions were committed maliciously. In the Decision wood vs Strickland it was found that "Moreover, Ignorance of the Law is explicitly equated with actual Malice." Ante, at 1000. \*329 This harsh standard, requiring knowledge of what is characterized as 'settled, indisputable law' leaves little substance to the doctrine of qualified immunity.

(7) ON 11-29-13 Claimant wrote a grievance stating my claim for relief of the alleged disciplinary being past its expiration date. LT. Williams informed Sgt B. Woodward that the disciplinary was still pending which was LT William going outside the scope of his office for giving false information during an official investigation.

Pursuant to the above ADs 13-10-11-65 and 1408 IF L.T. Williams would have did the PROPER investigation of the grievance He would have seen that the Policies stated in the above mention sections and by him not fulfilling the duties of his office he caused me to suffer longer in a punitive setting even after stating AD 13-10 within the body of the grievance. #EAM13-03 within the body of the warden Decision of this grievance it will show that at no time while on DCR for 19 did I ever received a disciplinary or a extension which all action on the disciplinary would have expired on 11-26-13 and Record clearly show because of Major Connor and LT Williams actions I was neglected in receiving my Procedural due Process Remedies.

(8) However, an act violating a state or constitutional right can not be justified by ignorance or disregard of settled laws. In other words an executive official is held to a standard of conduct but also on knowledge of the basic unquestioned constitutional and state rights of the individuals for whom the official is responsible. Therefore there is no immunity from civil damages if the official knows, or reasonably should have known, that the act taken within the sphere of his official responsibilities would violate the state and constitutional right of claimant or if the official took the action with malicious intent to cause a deprivation of state and Constitutional Rights of injury.

(9) Claimant moves that the commission reinstate the above style case, and allow claimant to present all evidence at a hearing to further prove his case

WHEREFORE, for the reasons and evidence above, Claimant Prays that The Commission will Reinstate the above style case and set it for a hearing.

Respectfully submitted  
Jimmy Frazier

Jimmy Frazier # 116550  
P.O. Box 970  
Marianna AR, 72360

### Certificate of Service

I certify that a copy of the above Motion for Reconsideration has been served this 29th day of MAY, 2015 to the below by placing a copy of the same in the U.S. mail, regular postage to:

Arkansas state Claims Commission (Director)  
101 East Capitol Ave, Suite 410  
Little Rock, AR 72201-3823

Before The Arkansas State Claims Commission  
Claims Review Subcommittee

JIMMY FRAZIER (AD 116550)  
VS

ARKANSAS DEPARTMENT OF CORRECTION

Arkansas Claims Commission

NO 15-0353 - GC  
JUN 29

Claimant

Respondent

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Notice of Appeal

Comes Now, the Claimant, Jimmy Frazier and for his Notice of Appeal and States and Respond as Follow:

1. Respondent and Commission has asserted that no new evidence was not introduced to the above style case. ON Mar 29 2015 new evidence was sent to the Claims Commission which was AD 11-65 which could show that Respondent never intended to follow Procedural and such has caused a denial of Claimant Procedural due Process rights.
2. An act violating a state or Constitutional right can not be justified by ignorance or disregard of settled laws. In other words an executive official is held to a standard of conduct but also an knowledge of the basic unquestioned constitutional and state rights of the individuals for whom the official is responsible. Therefore there is no immunity from civil damages if the official knows or reasonably should have known that the action taken within the sphere of his official responsibilities would violate the state and constitutional right of Claimant or if the official took the action with malicious intent to cause a deprivation of state and constitutional rights of injury.
3. In the Decision "Wood vs Strickland" it was found that "moreover ignorance of the law is explicitly equated with actual malice." Ante at 1000 \* 329. This harsh standard requiring knowledge of what is characterized as settled indisputable law leaves little substance to the doctrine of qualified immunity.



WHEREFORE. For the reasons and new evidence entered claimant  
PRAYS that the Committee Reverse and Reinstate the above style  
case.

Respectfully Submitted  
Jimmy Frazier

Jimmy Frazier #116550  
P.O BOX 970  
MARIANNA AR, 72360

### Certificate of service

I certify that a copy of the above Notice of Appeal has been  
Served this 26<sup>th</sup> day of June, 2015 to the below by placing a  
COPY the same in the U.S. Mail Regular Mail to;

Claims Review Subcommittee  
101 East Capitol Ave. Suite 410  
Little Rock, AR 72201 - 3823