

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

ARKANSAS STATE  
CLAIMS COMMISSION

SEP 11 2012  
RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

Detrick Croston, #131172, Claimant

vs.

State of Arkansas, Respondent  
Dept. of Correction

Do Not Write in These Spaces	
Claim No.	<u>13-0231-CC</u>
Date Filed	<u>September 11, 2012</u> (Month) (Day) (Year)
Amount of Claim \$	<u>5,000.00</u>
Fund	<u>DOC</u>

Failure to Follow Procedure

COMPLAINT

Detrick Croston, #131172, the above named Claimant, of 2501 State Farm Rd, Tucker, AR 72168  
(Name) (Street or R.F.D. & No.) (City)

County of \_\_\_\_\_ represented by \_\_\_\_\_  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

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

State agency involved: Arkansas Department of Corrections Amount sought: \$5000.00

Month, day, year and place of incident or service: On August 31st 2012 and September 4th 2012

Explanation: Pursuant to AR 835: " inmate Grievance Policy and Procedure"; it states disciplinary issues are non-appealable, therefore claimant now states his claim for relief;

ADC officials of the maximum security that whom to be ~~Mr~~ <sup>Mr</sup> G. Smith and Disciplinary Hearing Officer Minnie Drayer, employee of Central Office, both has deliberately committed violations AR 831 which to be " Inmate Disciplinary Manual's Rules and Regulations" and AR 10-19 " Employee Conduct Standards";

On the 31st day of August 2012 Mr G. Smith served claimant an F-831-1 form. At that point, claimant advised Mr G. Smith that he would like to call the surveillance camera to be reviewed from the alleged incident in which suppose to of occurred at 5:10 a.m. on 8-25-2012 and to be allowed to attach documents in defense of the allegations against him in the body of the F-831-1 form.

Claimant's request was instead governed by AR 831: Section (VII)(E)(1)(3) in which clearly states "The inmate must be afforded an opportunity to speak in his/her own behalf and submit any documents, evidence, exculpatory witness statements;"

Claimant's documents was instead an ADC Grievance Investigation Worksheet that was on file in the E-omis (a copy) and had something to do with the allegations in the body of the F-831-1 form served on claimant on 8-31-2012.

When Mr G. Smith reviewed it and saw that it was to help the claimant in his defense, Mr G. Smith advised claimant that he could not present or attach such documents.  
"SEE ATTACHED PAGES" page 1 of 6

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?  
NO; when? \_\_\_\_\_; to whom? \_\_\_\_\_  
(Yes or No) (Month) (Day) (Year) (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.

Detrick D. Croston  
(Print Claimant/Representative Name)

Detrick D. Croston  
(Signature of Claimant/Representative)  
T. Croston AD

By <sup>of</sup> G. Smith not allowing claimant to attach such documents in his defense, and also advising him that the disciplinary hearing officer will not be reviewing the camera for 8-25-12 at 5:10 A.M., in which was the date and time that claimant allegedly committed rule violations, <sup>of</sup> G. Smith also then violated policy.

To try to stop the deprivation before it continued, claimant handed <sup>of</sup> G. Smith a copy of AIC-831 and directed her to review sections (VII)(E)(13.) where it clearly states, claimant would be allowed to present documentary evidence. <sup>of</sup> G. Smith ~~however~~ still deliberately refused to allow claimant to attach such documents to the disciplinary packet knowing that claimant's hearing would be held by video conference, so any documentary evidence would have to be attached to the disciplinary packet so when it was forwarded to the hearing officer, it could be reviewed.

<sup>of</sup> G. Smith showed her bias and prejudice ways in such decision to deny claimant to attach such documents which to be two Inmate Grievance Investigation Worksheets under, Ketruck Craston CU-Grievance # 670 and # 750 because they both were in favor of claimant to ~~show~~ show his innocence in the allegations mentions in the body of the F-831 form written on 8-25-12, but <sup>of</sup> G. Smith allowed claimant to attach documents that Lt. SPENAS committed a violation of AD10-19, "Employee Conduct Standards", in the process of putting together. <sup>of</sup> G. Smith allowed such because she felt like such documents was of no help and claimant can say such due to the fact that she had no factual explanation to refuse claimant to attach his documents that was his evidence found through an investigation worksheet put together by no other than "ADC" officials, to clear claimant from allegations brought up in the F-831 form on 8-25-12.

On the 4th day of September 2012, claimant was brought before hearing officer Minnie Drayer. At that point claimant was placed in a bias and prejudice situation as well as subject to suffer from retaliation, due to the fact that claimant had filed a Civil Rights Complaint in the United States District Court, against her, Minnie Drayer in January 2010, initially.

So before claimant ever was started into the hearing, he requested to have his case passed on to the next hearing officer, in which defendant DRAYER or G. Smith had the authority to do but refused to do.

When the hearing started, claimant advised defendant DRAYER that he had requested for the camera to be reviewed in support of his defense and that he had documents that he would like to present to the court in defense of the F-831-1 form. At that time defendant DRAYER stopped claimant and advised him that she did not want to hear that.

At that point, defendant DRAYER showed that she was not going to be an fair and impartial fact-finder in which would deny claimant of an fair hearing. Claimant can say that with evidence ~~because~~ strictly because, AR 831 section (VII)(E)(13) clearly states, "The inmate must be afforded an opportunity to speak in his/her own behalf and submit any documentary evidence excluding witness statements."

Defendant DRAYER advised claimant that she was not going to review any documents he had, then found claimant guilty and sentenced him to punitive isolation, along with taking his class 1-C.

Defendant DRAYER then committed a violation AD 10-19, "Employee Conduct Standards" due to the fact that she stated she based her reasons for finding claimant guilty and punishing him because she had evidence in which was an F-831-1 form that state claimant was masturbating while looking at staff.

Defendant DRAYER did not have any documents that stated claimant was looking at staff and masturbating. Nowhere in claimant's F-831-1 form did it state that claimant was looking at any staff member.

After such hearing took place, G. Smith then neglected and/or deliberately refused to follow AR 831 under section (VII)(2)(b)(f.) and (3)(b.) in which states:

(VII)(2)(b)... "Statements made by inmates in their defense or otherwise should be entered in as great detail as possible under 'Inmate Statement'."

The inmate should be asked to sign beneath said statements indicating that the above ~~statement~~ is in fact what he/she stated. In the event that the inmate refuses to sign, the hearing officer should so indicate and initial the form.™

(M.)(2.)(f.)™ "The inmate must be provided a copy of this form.™

(M.)(3.)(b.)™ "The inmate must be provided a copy of the Form F-831-3.™

Claimant was never asked to sign beneath said statement indicating that the above is in fact what he stated. <sup>¶</sup> G. Smith and M. Drayer refused and neglected to ask as prescribed by policy stated above.

Claimant never received a copy of neither F-831-2 nor F-831-3 as policy stated above states that he must be provided with. Under section (VII.)(E.)(20.) it clearly states:

™ "The inmate will receive an oral statement detailing the reason for the finding of guilt or innocence at the time the hearing officer informs the inmate of the verdict. The hearing officer will reduce these reasons to writing prior to the conclusion of that business day and provide ~~to~~ a copy on ISSR 100 form generated by Electronic Offender Management Information System to the inmate within (24) hours. The inmate is not required to sign the typed copy. It is sufficient to indicate that the inmate signed (or refused to sign) the original copy.™

<sup>¶</sup> G. Smith and M. Drayer has also refused to follow such above named and described policy under All-831 (VII)(E.)(20.) as well because it has been well passed (24) hours and still no above named forms has been brought to me.

Claimant has right to believe such acts are deliberately or shall I say has been deliberately taken because he was not the only case whom <sup>4</sup>

to be suffering from such Policy violation that occurred on 9-4-2012 concerning the F-831-2 and F-831-3 forms.

Inmate Antwan McGee #124504 was found guilty in his hearing on 9-4-2012 along with me also. So when he neither received his results forms, and we were standing in West Isolation getting our property inventoried, he then asked of Bogwell whom ~~who~~ work in the disciplinary office also, "Why didn't we receive our blue slips?"

of Bogwell looked confused and stated, "You didn't get forms?" and right then over her security radio, advised disciplinary personnel to bring the blue slip (results slips). Within minutes of Shelton came in West Isolation and handed out inmate A. McGee #124504, some results sheets but no longer than (90) seconds later of G. Smith came in West Isolation and asked of Shelton, "What did you do with that blue slip?" of Shelton advised of G. Smith, "I GAVE it to inmate McGee." of G. Smith advised of Shelton, "Nah, Get that back from him" and of Shelton rushed back over to A. McGee and took his results sheets back then gave it back to of G. Smith.

of G. Smith had no justification whatsoever to make of Shelton ~~and~~ take inmate A. McGee's results sheets and that shows that of G. Smith deliberately withheld claimant's hearing results sheets and for what reason I don't know. On 9-4-2012 of G. Smith was the controlling officer whom handled the computer operations for disciplinary hearings and was responsible for assuring that all inmates including claimant, be protected by all rules and regulations that affords an inmate under MC-831.

Wherefore, due to claimant's above allegations and evidence of violation in policy and procedure under Administrative Regulation 831 applicability: To inmate and staff, approved by Director Ray Hobbs, he shall be granted all relief requested, but claimant now states that he would

result to no alternative agreed upon settlement other than his initial request for relief sought.

Respectfully Submitted,  
Detrick D. Crestone

cc/ Warden William Straughn  
Lisa Wilkins, ADC Attorney

State of Arkansas  
County of Jefferson

Subscribed and sworn before me, a Notary Public, on this day  
of September 2012.

My Commission Expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_



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

## ADMINISTRATIVE DIRECTIVE

**SUBJECT:** Inmate Disciplinary Manual

**NUMBER:** 11-51

**SUPERSEDES:** 11-32

**APPLICABILITY:** Inmates and Staff

**REFERENCE:** AR 831 – Disciplinary Rules and Regulations

**PAGE** 1 of 43

**APPROVED:** Original signed by Ray Hobbs, Director

**EFFECTIVE DATE:** 9/26/2011

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**I. POLICY:**

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

**II. EXPLANATION:**

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

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

( B. ) there is no presumption of guilt;

- C. there is a reliable method of determining whether an infraction has in fact occurred; and
- (D.) blatant forms of partiality which can result from prior knowledge, involvement, bias, or personal interest in a particular case is minimized.

### III. DEFINITIONS:

- A. Disciplinary Hearing Administrator - member of the Internal Affairs staff and may be the Internal Affairs Administrator. The Disciplinary Hearing Administrator is responsible to ensure that all officers, Disciplinary Hearing Officers, Serving Officers, and Minor Disciplinary Officers are properly trained and will regularly review the hearings conducted by these officers.
- B. Disciplinary Hearing Officer - conducts hearings on Major Disciplinary known as Major Disciplinary Court.
- C. Serving Officer/Notifying Officer - serves charges on the inmate(s), may appoint a counsel substitute and receives the inmate's list of witnesses regarding the charge.
- D. Minor Disciplinary Officer - conducts hearings on minor disciplinary charges referred to as Minor Disciplinary Court.
- E. Disciplinary Report - the factual basis for the charge of rule violation(s) and the rule(s) violated.
- F. Charge - the details of the rule violation(s) contained in the Disciplinary Report.
- G. Assault - a willful "attempt" or "threat(s)" to inflict injury upon the person of another.
- H. Battery - the actual use of physical force upon the person of another.
- I. Indecent Exposure - public exposure of one's sex organs for gratification or pleasure.
- J. Masturbation - manipulating one's sex organ to arouse or gratify a sexual desire; does not require exposure.
- K. Staff includes any employee of the Arkansas Department of Correction, the Correctional School System, and any employee or contractor providing services within an Arkansas Department of Correction facility through contract or agreement with the Arkansas Department of Correction.



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

episode may also be imposed. The punishment may be made consecutive.

#### 4. Guilty Verdicts

All disciplinary hearing report forms which render a verdict of guilty shall be transmitted by the Hearing Officer to the Supervisor of Records who will promptly note the action taken against each inmate. The Supervisor of Records shall make whatever changes are required regarding statutory good time, meritorious good time, parole interview date and institutional status and cause them to be made a part of the inmate's permanent file.

#### (M.) Major Disciplinary Forms

The major disciplinary forms consist of six separate forms. Forms F-831-1, F-831-2, and F-831-3 must be completed entirely pursuant to every major disciplinary hearing, regardless of the verdict. Data related to each form should be entered and maintained electronically when available in the electronic Offender Management Information System. The ISSR 100 electronic printed form shall contain all data found in F-831-1, F-831-2 and F-831-3 after data entry.

##### 1. Form F-831-1

- a. The charging person is responsible for providing the Major Disciplinary Hearing Officer with accurate reports of rule violations. All information pertaining to the charge(s) must be detailed by the charging person. The charging person must sign an affirmation regarding the accuracy of the charges.
- b. The notification officer must indicate his/her name and the time and date the inmate was notified of the impending major disciplinary action. The inmate may call witnesses at the time of notification by informing the notification officer of those individuals he/she wishes to call as witnesses. The notification officer should then list the witnesses called and instruct the inmate to sign the form under "Witness Statements." If the inmate refuses to sign, such refusal should be noted with the initials of the notifying officer.
- c. The chief security officer (Building or Field Majors or their designees) must review each disciplinary report prior to a hearing for screening purposes. After indicating the

appropriate decision, the chief security officer must initial and date the form under "C.S.O. Review."

- d. There must be an indication of whether an extension was granted and, if so, whether the extension form was completed.
- e. The hearing officer is reminded of the policy on counsel substitutes. When assigned, it should be so indicated and the name of the counsel substitute entered. When not assigned the appropriate space should be marked.
- f. A copy of Form F-831-1 or ISSR 100 shall be forwarded to the inmate.

**2. Form F-831-2**

- a. The Major Disciplinary Hearing Officer must ensure that all information at the top of Form F-831-2 is correct. Care should be taken to note the time when the hearing starts and stops, as well as the exact location on the tape recorder. If the inmate refuses to attend, there is a reminder that the waiver form must be completed. In all cases, the inmate's plea will be entered accurately.

**(b)** Statements made by inmates in their defense or otherwise should be entered in as great detail as possible under "Inmate's Statement." The inmate should be asked to sign beneath said statements indicating that the above is in fact what he/she stated. In the event that the inmate refuses to sign, the hearing officer should so indicate and initial the form.

- c. Under "Questions," the hearing officer should indicate the general line of questioning pursued. The hearing officer should probe for any and all additional information which could aid in reaching a fair determination of fact.
- d. The hearing officer must indicate the verdict reached and the punishment agreed upon, and shall indicate the class that the inmate may be placed in.
- e. Under "Factual Basis for Decision," the hearing officer must give a short synopsis of the facts as the hearing officer perceives them after reviewing all of the evidence. This section should not be confused with "Evidence Relied

Upon" or "Reasons for Punishment." This should include a summary of the reasons for finding the inmate guilty or not guilty. In fulfilling this function, it is not sufficient to adopt and copy the exact wording of the disciplinary report.

f.) The inmate must be provided a copy of this form.

3.) Form F-831-3

- a. Under "Evidence Relied Upon," the hearing officer must include a list of the individual pieces of evidence that were relied upon in reaching a disposition. Shorthand phrases such as "Officer's Statement" will not be sufficient to perform this function. The evidence must not only be described, but must be explained. The content of any evidence relied upon should be given. Thus, if a charging person's report is to be relied upon, the hearing officer should so state and then proceed to explain exactly what it was in the person's report that the hearing officer relied upon. In cases where weapons or contraband are involved, a notation should be made in the proper slot indicating the form in which it was observed and further describing the item with particularity.
- b. In any case where the hearing officer makes a finding of guilty notwithstanding the fact that there was some evidence which purported to exonerate the inmate, the hearing officer must include a statement indicating the reason why such evidence was discounted.
- c. Under "Reasons for Assessment of Punishment," the hearing officer must state why he/she felt the particular disciplinary warranted the punishment assessed.

It is not enough to state, "nature and seriousness of offense and past history." It is important that the Disciplinary Hearing Officer keep in mind that the purpose served is that of providing an independent reviewing authority with an adequate basis from which to determine why a particular inmate received the particular punishment imposed. Special care should be given to document reasons for differences in punishments given to different inmates in the same incident. Factors to be weighed in assessing the punishment should include, but not be limited to: the seriousness of the offense and the extent to which the offense threatened institutional security; the number of

major disciplinaries received by the inmate for similar offenses, the overall institutional record of the inmate; the attitude of the inmate including his/her willingness to cooperate fully with the Disciplinary Hearing Officer; personal factors which may have influenced the inmate to behave poorly (i.e., death in the family); inmate's willingness or lack thereof to return to work and perform as expected; any hostility which the inmate may have exhibited toward the Disciplinary Hearing Officer; any remorse the inmate may show regarding his/her behavior; any effect a contemplated punishment may or may not have in impressing upon the inmate the need for behavior modification; any effect a contemplated punishment may have in terms of rewarding the inmate with a second chance if the hearing officer believes behavior will improve as a result thereof; the class status of the inmate should be kept in mind when assessing the punishment (punitive time may not be necessary for a Class I inmate if the hearing officer feels that a class reduction would sufficiently impress upon the inmate the prohibition against the particular behavior). As mentioned, the above are suggested factors to take into consideration when assessing punishment and are by no means exhaustive. The hearing officer should stay alert to any mitigating or aggravating circumstances associated with a particular disciplinary episode. The hearing officer must initial the "Reason for Punishment" in the appropriate space.

- d. A reminder is included regarding the proper procedures for informants and alleged malingers.
- e. The inmate, having been informed of the right to appeal, is instructed to sign the form indicating that he/she understands the right to appeal. If a counsel substitute has been assigned, he/she should also sign. If an inmate refuses to sign, the hearing officer should so indicate by initialing the slot reserved for the inmate's signature.
- f. The hearing officer must sign and date the disciplinary form.
- g. The inmate must be provided a copy of Form F-831-3.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DETRICK CROSTON (ADC 131172)

CLAIMANT

V.

NO. 13-0231-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**ANSWER**

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

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

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

Respectfully submitted,  
Department of Correction Office of Counsel

**ARKANSAS STATE  
CLAIMS COMMISSION**

SEP 17 2012

**RECEIVED**

*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 this pleading has been served this 12<sup>th</sup> day of September, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Detrick Croston (ADC 131172)  
Maximum Security Unit  
2501 State Farm Road  
Tucker, AR 72168-8713

*Lisa Mills Wilkins*  
LISA MILLS WILKINS Ark. Bar #87190

DEC 28 2012

RECEIVED  
CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DETRICK CROSTON (ADC #131172)

V.

NO. 13-0231-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**MOTION TO DISMISS**

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


1. Claimant has filed an action seeking \$5,000.00 for failure to follow policy arising from an officer's disciplinary written on or about August 25, 2012. Claimant maintains that Respondent did not follow correct disciplinary policy in issuing and finding him guilty of the disciplinary violation.
2. Claimant has failed to state a claim upon which relief can be granted under ARCP Rule 12(b)(6) and the matter should be dismissed.
3. Claimant has no liberty interest in having the ADC official follow the procedures. *Munson v. Arkansas Department of Correction*, 294 S. W. 3d 409, 411 (2009). Claimant does not have a liberty interest in the actual procedures to be administered. *Kennedy v. Blankenship*, 100 F. 3d 640 (8<sup>th</sup> Cir. 1996). *Munson* is one of many cases in which the Supreme Court has considered an inmate's due process challenge to a disciplinary action which resulted in the inmate's loss of status class, certain privileges, punitive isolation, or other sanction. The Court has stated that an inmate does not have a liberty interest in proceedings administered by the ADC and sanctions imposed are insufficient to raise a due process claim. In Arkansas, there is no liberty interest in good time under the analysis in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). A loss of class status and privileges, even if impacting good time, would not compromise a liberty interest. Claimant has asserted no substantive due process violation as a result of the sanctions that were imposed by the ADC in the proceeding. To state a case for a substantive due process violation, appellant must have shown an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Demotion from the general population is not the sort of deprivation that qualifies as 'atypical and significant.' *Kennedy* at 642.
4. Attached as Exhibit "A" is a copy of Claimant's disciplinary violation showing that his punishment was only punitive isolation and class reduction. Therefore, Claimant suffered no dramatic departure from the basic conditions of his confinement and Claimant has stated no due process violation or liberty interest violation.
5. Furthermore, Claimant did not appeal the hearing administrator's decision to the Director, Ray Hobbs, therefore, Claimant did not avail himself of the opportunity to exhaust his

administrative remedies by seeking reversal at the highest level. The disciplinary stands as issued.

6. A motion to dismiss is proper when there are no facts upon which relief can be granted. ARCP 12(B)(6). Claimant has failed to state facts to support his claim. Respondent moves that the commission dismiss this claim.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claim must be dismissed.

Respectfully submitted,  
Department of Correction  
Office of Counsel

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

#### CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 20 day of December, 2012, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

DETRICK CROSTON (ADC #131172)  
MSU  
2501 State Farm Road  
Tucker, AR 72168

  
LISA MILLS WILKINS Ark. Bar #87190



Name: Croston, Detrick D.

ADC #: 131172A PID #: 0152972

ISS001B

# Disciplinary Violation

Thursday December 20, 2012

11:48:23 AM

Violation Date*: 08/25/2012	Time*: 05:10:00 AM
Version*: 4-1988 - Present	
Facility*: Maximum Security Unit [C01]	
Zone*: Maximum Security Unit	
Location within Facility*: Living Area	
Shift:	
Charged by Staff*: Hunter, Gabrielle S	Violation Type*: Major
Received Date*: 08/31/2012	Time*: 09:22:24 AM
Received By Staff*: Smith, Gloria A	
# Injuries to: Staff*: 0	
Inmates*: 0	
Visitors*: 0	
Weapon Involved: <input type="checkbox"/>	
STG Involved:	
Incident Report #: 2012-08-066	

Code	Code Violation
10-3	Indecent Exposure
12-1	Failure To Obey Order Of Staff

On August 25, 2012 at approx 510am, I, COI G. Hunter seen Inmate Croston, D #1331172 (2-05) Zone 1 standing in his cell while holding his exposed erect penis in his hand. Stroking it in a back and forward motion. I was working in 2&4 control when this incident occurred. I gave Inmate Croston, D #131172 several direct orders to stop, But he continued. Therefore, I CO1 G. Hunter am charging Inmate Croston, D #131172 with the following rule violations: 10-3, 12-1, Inmate Croston, D has been charged with one 10-3 sing 2009

CSO Staff*: Williams, Maurice E	Action*: Refer to Hearing Officer/Comm.
Review Date*: 08/31/2012	

None

None

Inmate Notified by Staff*: Smith, Gloria A	
Inmate Notified Date*: 08/31/2012	Time*: 12:12:00 PM
Extension Granted as of Date:	Time:

Hearing Date: 09/04/2012	
Start Time: 11:15:00 AM	End Time: 11:22:00 AM
Recorder: Drayer, Minnie L	



Exhibit

A

17

Tape #: 01	Side: Side A
Meter From: 458	To: 480
2nd Tape #:	Side:
Meter From:	To:
Facility: Maximum Security Unit [C01]	
Hearing Officer: Drayer, Minnie L	
Disposition: Guilty	
Counsel Substitute Name:	

Attendance Waived

I WAS WALKING BACK AND FORTH IN MY CELL. I WAS NOT MASTURBAING

Do you have a statement?

Code Violation	Plea	Verdict
Indecent Exposure	Not Guilty	Guilty
Failure To Obey Order Of Staff	Not Guilty	Guilty

**Punishment Sanctions**

Reprimand	<input type="checkbox"/>		
Impose Suspended Sanctions for Disciplinary Rule Violation on:	<input type="checkbox"/>	Date:	Time:
Restriction Days to Serve:			
Commissary:	0	Days Suspended:	0
Mail:	0	Days Suspended:	0
Phone:	0	Days Suspended:	0
Visitation:	0	Days Suspended:	0
Recreation:	0	Days Suspended:	0
Punitive Isolation Days to Serve:	30	Days Suspended:	0
How Served:	Consecutive		
Extra Duty Hours Assigned:	0	Hours Suspended:	0
GT Class Reduced to:	Class IV	Class Suspended:	
GT Days Forfeited:	0	Days Suspended:	0
Restitution Owed:	0.00	Dollars Suspended:	0.00
Suspended Sanctions Duration (in Days):	0 N/A		
Days available to be Taken on MR:		on PE/TE:	

STAFF OBSERVED CROSTON WITH HIS PENIS EXPOSED AND ERECTED AND STROKING IT BACK AND FORTH MASTURBATING WHILE LOOKING AT STAFF AND REFUSE TO STOP  
 F-1 STATES STAFF OBSERVED CROSTON WITH HIS PENIS EXPOSED AND ERECTED AND STROKING IT BACK AND FORTH MASTURBATING WHILE LOOKING AT STAFF AND REFUSE TO STOP  
 Staff report is accepted.

**CROSTON IS A CLASS IC INMATE WHO MUST LEARN THAT EXPOSING HIS PENIS MASTURBATING WHILE LOOKING AT STAFF IS AGAINST ADC WRITTEN POLICY AND WILL NOT BE TOLERATED**

DR Status: Finalized	As of Date: 11/28/2012	<b>Status History</b>
----------------------	------------------------	-----------------------

Appealed to Warden Date: 09/04/2012	Outcome: Findings Upheld	Date: 09/19/2012
Appealed to H/O Admin. Date: 09/04/2012	Outcome: Findings Upheld	Date: 10/31/2012
Appealed to Director Date:	Outcome: N/A	Date:

I have reviewed your appeal, and find that records show that you were given a fair and impartial Hearing, with no violation of your due process rights. The Hearing Officer found you guilty of violating rules 10-3 and 12-1, after examination of the Charging Officer's eyewitness statement. In your appeal, you presented no evidence or witness statement to justify reversal or modification of the punishment assessed against you. Therefore, your appeal is denied. You have the right to appeal this decision to Disciplinary Hearing Administrator, located at the Central Office, within fifteen (15) days.

**Prepare To Fix Non-Sanctions Data**

**Print this Screen**

**Prior Page**

Show Last Updated Information

Before The Arkansas State Claims Commission

Leticia D. Creston

vs.

Case No. 13-0231-CC

ARKANSAS STATE  
CLAIMS COMMISSION

JAN 07 2013

RECEIVED

Arkansas Dept. Of Corrections

Response / Objections To Defendants Motion To Dismiss

Comes Now, the Claimant, Leticia D. Creston, and for his Amended claim and objections to Defendants Motion To Dismiss and states as follows:

1. Claimant has filed an action seeking \$5,000 for failure to follow policy arising from defendants violating its own policy that protects claimant and governed by granting / approval of the Arkansas Board of Corrections. Claimant maintains that ~~the~~ defendants deliberately and ~~purposefully~~ maliciously violated its own policy out of retaliation, in which also violates A.D.C. Policy.

2. Claimant has not failed to state a claim upon which relief can be granted under ARCP Rule 12 (b)(6) and the matter should not be dismissed, due to claimants attached evidence herein as well as, attached and presented in the initial complaint filed.

3. The Arkansas State Claims Commission has previously stated and made part of its instructions and guidelines that claims through Argument can not be made or brought concerning "Due Process" nor "Constitutional Rights", so Defendants Reason listed as

no. 3) in its Motion To Dismiss, shall be rejected by the Commission, ~~and~~ such argument surrounds and concerns "Due Process" but if the Commission has an exception because of Murphy v. Illinois, claimant now states:

" Generally, a liberty interest exists only if: (1) the state restricts by rule, regulation or statute when an inmate can be placed in restrictive confinement (removed from ~~the~~ general population), such as the inmate being found guilty of a misconduct, Anderson v. Becare, 317 F.3d 114, 119 (2d Cir. 2003); (2) The restrictive conditions imposed are "atypical and significant hardship" on the inmate, Keenan v. Hall, 83 F.3d 1083, 1088 (9th Cir. 1996) amended by 135 F.3d 1318 (9th Cir. 1998).

In some disciplinary cases, the sanction may not be severe enough enough to amount to a deprivation of liberty, but due process may be required because the claimant has been deprived of property.

Jeffries v. Tenn. Dept. of Corrections, 108 S.W.2d 862, 872-73 (Tenn. Ct. App. 2002). Courts have assumed that a disciplinary deprivation of property requires the procedural protections of Hall v. McInnes, 418 U.S. 539, 91 S.Ct. 2963, 41 L.Ed. 2d 935 (1975).

Courts to consider the questions have said the "atypical and significant" hardship rule of Sanjour v. County, which is entirely about liberty does not mention due process rights to property. Boone v. Mitchell, 984 F. Supp. 1304, 1311-12 (D. Nev. 1997).

In this hearing case, claimant was subjected to felony violations / deprivation of the protection to take out of retaliation with evil intent, ~~also~~ takes from the inmate trust level, placed in restrictive confinement, deprived of all property except for 3 books 1 pen, 1 table, and 2 chairs vis-

itations, privileges, television privileges, commissary purchases, and telephone minutes for the first 30 days of each month. ~~These~~ These taken from class 1C to class ~~4~~ to where I can not receive any good time for the next 180 days.

As far as having no set criteria that of discipline placed us not subject, all because the herein named defendants G. Smith and M. Driver intentionally and deliberately violated its own policy.

4. Respondents argument as relates to prison, under 2254 shall be dismissed and objections by claimant heard because claimant did suffer dramatic departure from the basic conditions of confinement and claimant has stated a due process violation and liberty interest violation.

- Pursuant to Ark. Code Ann. § 12-29-202 "Classification Committee"
- (b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitives, activities may earn up to one (1) day for every day served as a reward toward his or her transfer eligibility date for each date incarcerated after imposition of sentence.
- (2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary actions shall not be entitled to earn ~~any~~ meritorious good time.
- (3.) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.
- (SEE ATTACHED A.C.A. 12-29-202 "Classification Committee.")

Claimant was reduced to class 1, the lowest class that an inmate can be. Claimant had to serve (30) days punitive segregation. Once you are under punitive segregation, you must serve those days without

EARNING MENTIONED GOOD TIME SO CLAIMANT DONE (30) DAYS DEAD TIME, NO GOOD TIME. CLAIMANT THEN ON COMPLETION OF HIS PUNITIVE SENTENCE MUST SERVE (90) DAYS CLASS 4 AND BE ALSO DENIED MENTIONED DUE FOR BEING CLASS 4.

SO RESPONDENTS ARGUMENT OF CLAIMANT DID NOT LOOSE GOOD TIME SHALL BE DISMISSED BECAUSE CLAIMANT ~~STILL~~ LOST (120) DAYS GOOD TIME BY BEING CLASS 4 FOR (120) DAYS.

5. CLAIMANT STATES THAT RESPONDENTS ARGUMENT IN THE MOTION TO DISMISS UNDER NO. 5 SHOULD BE DISMISSED DUE TO CLAIMANT HAS EVIDENCE THAT IS IN FACT A STATE DOCUMENT WHICH TO BE AN GRIEVANCE, DATED NOVEMBER 9, 2012, REPORTING THAT CLAIMANT WAS DENIED ACKNOWLEDGEMENT, OF HIS DISCIPLINARY APPEAL TO DIRECTOR RAY HOBBS AND THAT THE APPEAL TO THE DISCIPLINARY HEARING ADMINISTRATOR, RAYMOND NAYLOR, HAS NOT BEEN RESPONDED TO IN VIOLATION OF ARL 831.

(SEE ATTACHED GRIEVANCE LABELED EXHIBIT A)

THE DEFENDANTS HAS AGAIN DENIED CLAIMANT OF THE PROTECTIONS OF ARL 831 "DISCIPLINARY POLICY AND PROCEDURE" USE AS WELL AS MIO 10-19 "EMPLOYEE CONDUCT STANDARDS" BY ~~DO~~ TAMPERING WITH CLAIMANTS APPEAL.

RESPONDENTS DEFENDANTS AND OFFICIALS OF THE MAXIMUM SECURITY UNIT HAS FABRICATED DOCUMENTS PRESENTED TO THE COMMISSIONERS.

"IF PAGE 3 OF RESPONDENTS EXHIBIT "A" ATTACHED TO MOTION TO DISMISS" IS REVIEWED, IT WILL SHOW THAT CLAIMANT APPEALED HIS DISCIPLINARY, TO THE UNIT WARDEN ON 9-4-2012, WHICH IS THE FIRST STEP AND UPHOLD ON 9-19-2012, BUT ALSO IT STATES THAT I APPEALED TO THE MIO ADMIN. ON 9-4-2012 AND UPHOLD ON 10-31-2012 WHICH TO BE IMPOSSIBLE TO HAVE APPEALED TO BOTH AT ONE TIME."

PURSUANT to AR 831 / AD 12-20 "Inmate Disciplinary Manual" PAGE 26 of 40 (H.) (1.) "The APPEAL shall be submitted in writing & within (15) days to the Warden if the inmate is serving punitive time as a result of the disciplinary. The Warden should answer the appeal within (10) days (calendar days). If the inmate does not agree, he may appeal to the Mediums Administrator within (15) days, who has (30) days to respond."

Claimant appealed to the Director due to not receiving his appeal by October 19, 2012 as proscribed by policy. Such appeal to Ray Hobbs was mailed out October 29, 2012 and the attached Grievance as exhibit A. was written November 9, 2012.

By policy, both Warden Strough denied claimant of Policy and procedure by not time responding to appeals as proscribed by the attached AR 12-20. Raymond Naylor was to respond by October 19, 2012 but refused and responded October 31, 2012. (see "attached exhibit B.")

6. A motion to dismiss shall be denied when there are facts upon which relief can be granted. Claimant has not failed to support his claim and for, claimant's claim of Retaliation.

Claimant's claim is about violation of Policy and procedure set out by the Arkansas Board of Corrections and granted by the Director. This policy was not violated through neglect or mistake but was purposely and deliberately.

Claimant advised defendant G. Smith before the hearing took place and the violation of AR 831 / AD 12-20, that the ~~action~~ decision to refuse me to present evidence in my defence, would violate Policy Procedure. (SEE attached Exhibit C) I advised her on 8-31-2012 and I did not go before an hearing until 9-4-2012, which



Shows that defendant G. Smith deliberately refused to follow policy and her acknowledgment to Grievance No. M&N-2487, which she answered on 8-31-2012 and signed. (See Exhibit C.)

7. Respondents claim that claimant has no liberty interest in having the AOC officials follow the procedure nor due process claim.

It has been ordered and supported by statutes of Arkansas Code Annotated § 25-15-212(h)(3) in the Ark. Sup. Ct. in Stewart v. Ark State Police Comm., 329 Ark. 46, 945 S.W.2d 377; that a procedure is "unlawful" when a agency fails to follow that which it has prescribed.

It has become axiomatic that an agency (which the AOC is) is bound by its own regulations. The fact that a regulation as written does not provide (the agency) a quick way to reach a desired result does not authorize it to ignore the regulation.

The decision of an administrative agency may be reversed "if the substantial rights of the claimant have been prejudiced because the administrative findings... are... made upon unlawful procedure." Rose Care Facilities, Inc. v. Rose Care, 322 Ark. 771, 912 S.W. at 411 (quoting Ark. Code Ann. § 25-15-212(h)(3)).

The Arkansas legislature sought to prohibit inmates from seeking state judicial review of prison disciplinary ~~and~~ proceedings. see § 25-15-212(a). However, in Clustor v. Bonds, the Arkansas Supreme Court held that the legislature could not preclude courts from reviewing claims that raise federal or state constitutional ~~issues~~ questions or where good time was forfeited since such forfeiture, cannot occur without due process of law. 812 S.W.2d 169 (Ark. S. Ct. 1991). This means that all Arkansas inmates can

bring challenges in State ~~and~~ courts to misconduct guilty findings where good time was forfeited or where the issue being raised is of a constitutional nature.

The rights that were prejudiced in claimant's claim herein, were indeed substantial. Claimant had a protected right under AR 831 of the Department of Corrections Rules and Regulations, to submit documentary evidence including witness statements. ~~per~~ AR 831 (E.) (13) and defendant G. Smith deliberately ignored her duties as a service official along with defendant M. Drayton, all out of retaliation, in which also violates AIC 10-19 "Employee Conduct Standards." (see Attached Exhibits "C" and "D")

Neither defendant, G. Smith nor M. Drayton could present to the Commission, in reason why claimant was deliberately refused to have state documents, on file in ~~the~~ the Department's Comis System, and also one claimant's persons, to present in defense of the charges against claimant.

The Director of the Department of Corrections governed a policy regulation that allowed claimant's request to have such documents placed in to the record for claimant's defense. (see AD 12-20, Attached Exhibit "E").

Claimant put ~~the~~ each named defendant on notice of it's policy violations before submitting this claim to the Commission. The defendants acknowledged the attached grievances and deliberately ignored its own policy and regulations.

The rights that were prejudiced were substantial. The courts in Walt vs. McQuinnell, has said that the disciplinary procedures must satisfy reasonableness requirements in order to protect the prisoner rights. 718 (11) 539, 41 L.Ed 2d 935, 91 S.Ct. 2963 (1974).

Under the Sakonasa Supreme Court ~~of~~ Reformed on good law

through the majority opinions, the court cited the case, Regional Care Facilities, Inc vs. Rex Case 322 Ark. 767, 912 S.W. 2d 409 (1995), for the rule that an administrative agency may be reversed if the substantial rights of the ~~aggrieved~~ claimant has been prejudiced because the administrative findings are made upon unlawful procedure.

8. Wherefore, claimant has proven that the defendants violated its own policy before and after the hearing. That claimant was taken from General Population where he was allowed to participate in programs, school, get visits, telephonic privileges, earn good time due to being an class 1-C inmate, etc.

The placed in punitive isolation for (30) days in a small segregated cell by himself, with no more than (10) different items. (See ~~Available~~ Punitive Segregation)

Claimant's Objection to Respondent's Motion To Dismiss, shall heard, considered and Respondent's Motion To Dismiss be denied, a hearing held and claimant present at such hearing. Due to violation of policy and Retaliation.

9. For the reasons stated above and the evidence attached as well as the initial Complaint filed with attached evidence submitted, the Motions To Dismiss shall be denied.

Respectfully Submitted,  
Detrick D. Crosson  
2501 State Park Rd.  
Tucker, Arkansas 72168

Certificate of Service

I certify that a copy of the above pleadings has been served this 26th day of December 2012, on below respondent by placing a copy of the same in the U.S. Mails, Regular Postage to:

Lisa Mills Wilkins  
P.O. Box 8707  
Pine Bluff, Ark 71611

Detree D. Gostford

UNIT LEVEL GRIEVANCE FC

EXHIBIT H  
1 (Attachment 1)

RECEIVED

FOR OFFENSE ONLY	
GRV. #	11-12-3263
Date Received:	11-21-12
GRV. Code #:	400

Unit/Center Maximum Security

Name Detrick D. Croston

NOV 21 2012

ADC# 131172 Brks # 7-10 Job Assignment Offense Officer  
Maximum Security Unit

11/9/12 (Date) STEP ONE: Informal Resolution

11/20/12 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: Where is my response?  
This Grievance has not been resolved.

(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:

I have not received an response to my appeal nor answer

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, place, name of personnel involved and how you were affected. (Please Print): Mr. Raymond Naylor at Central Office after the disciplinary appeals and whom to be the disciplinary hearing administrator, has refused to answer my disciplinary appeal that was filed concerning an disciplinary that I was last found guilty of on September 4, 2012 by D.M.O. Minnie Dreyer.

By the standards of AR 831, the Disciplinary Hearing Administrator has (30) days to answer an appeal through an decision but Mr. Naylor has refused to honor such policy and so I went to the next step by appealing such to Director Ray Hobbs, and has not received acknowledgement concerning such appeal.

I now ask that it be investigated through the proper channels, to find out why has Mr. Raymond Naylor refused to answer my disciplinary appeal within the specified time required by AR 831 in answering disciplinary appeals.

He be acknowledged of why Director Ray Hobbs has not send acknowledgement in receiving my appeal to his office.

Detrick D. Croston  
Inmate Signature

November 9, 2012  
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 11-13-12 (date), and determined to be Step One and/or an Emergency Grievance NO (Yes or No). This form was forwarded to medical or mental health? NO (Yes or No). If yes, name of the person in that department receiving this form: \_\_\_\_\_ Date \_\_\_\_\_

Sgt. Davis 52699 Sgt. Orr 11-13-12  
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: He has answered you a

Richard Clark 11/20/12  
Staff Signature & Date Returned

D. Croston 11/20/2012  
Inmate Signature & Date Received

This form was received on 11/20/12 (date), pursuant to Step Two. Is it an Emergency? NO (Yes or No).

Staff Who Received Step Two Grievance: Richard Clark Date: 11/20/12

Action Taken: \_\_\_\_\_ (Forwarded to Grievance Officer/Warden/Other) Date: 11/20/12

If forwarded, provide name of person receiving this form: Grievance Box Date: 11/20/12

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

EXHIBIT VI  
2-10

Reject

IGTT400  
3GR

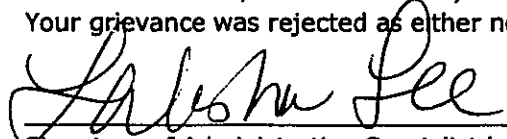
Attachment II

### ACKNOWLEDGMENT OR REJECTION OF UNIT LEVEL GRIEVANCE

TO: Inmate Croston, Detrick D.  
FROM: Lee, Lakisha S  
DATE: 11/21/2012

ADC #: 131172A  
TITLE: Administrative Specialist I  
GRIEVANCE #: MX-12-03263

Please be advised, I have received your Grievance dated 11/09/2012 on 11/21/2012.  
Your grievance was rejected as either non-grievable, untimely, duplicative, frivolous, or vexatious.

  
\_\_\_\_\_  
Signature of Administrative Specialist I

### CHECK ONE OF THE FOLLOWING

- This Grievance will be addressed by the Warden/Center Supervisor or designee.
- This Grievance is of a medical nature and has been forwarded to the Health Services Administrator who will respond.
- This Grievance involves a mental health issue and has been forwarded to the Mental Health Supervisor who will respond.
- This Grievance has been determined to be an emergency situation, as you so indicated.
- This Grievance has been determined to not be an emergency situation because you would not be subject to a substantial risk of personal injury or other serious irreparable harm. Your Grievance will be processed as a Non-Emergency.
- This Grievance was REJECTED because it was either non-grievable ( Disciplinary matter ), untimely, was a duplicate of , or was frivolous or vexatious.

### INMATE'S APPEAL

If you disagree with a rejection, 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. Keep in mind that you are appealing the decision to reject the original complaint. Address only the rejection; do not list additional issues, which were 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.

Inmate Signature	ADC #	Date

30

Exhibit 15

CROSTON IS A CLASS IC INMATE WHO MUST LEARN THAT EXPOSING HIS PENIS MASTURBATING WHILE LOOKING AT STAFF IS AGAINST ADC WRITTEN POLICY AND WILL NOT BE TOLERATED

DR Status: Finalized	As of Date: 11/28/2012	<b>Status History</b>
----------------------	------------------------	-----------------------

Appealed to Warden Date: 09/04/2012	Outcome: Findings Upheld	Date: 09/19/2012
Appealed to H/O Admin. Date: 09/04/2012	Outcome: Findings Upheld	Date: 10/31/2012
Appealed to Director Date:	Outcome: N/A	Date:

I have reviewed your appeal, and find that records show that you were given a fair and impartial hearing, with no violation of your due process rights. The hearing officer found you guilty of violating rules 10-3 and 12-1, after examination of the charging officer's eyewitness statement. In your appeal, you presented no evidence or witness statement to justify reversal or modification of the punishment assessed against you. Therefore, your appeal is denied. You have the right to appeal this decision to Disciplinary Hearing Administrator, located at the Central Office, within fifteen (15) days.

**Prepare To Fix Non-Sanctions Data**

**Print this Screen**

**Prior Page**

Show Last Updated Information

UNIT LEVEL GRIEVANCE FC 1 (Attachment I)

RECEIVED

Unit/Center Tucker Max

Name Detrick D. Creston SEP 07 2012

ADC# 131172 Brks # 7-35 Job Assignment Grievance Officer Maximum Security Unit

FOR OFFICE USE ONLY	
GRV. #	<u>MS-12-2487</u>
Date Received:	<u>9/7/12</u>
GRV. Code #:	<u>000</u>

8-31-12 (Date) STEP ONE: Informal Resolution

8-31-12 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: Such response has nothing to do with what i grieved and MS. G. Smith knows that, i clearly stated.

(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, place, name of personnel involved and how you were affected. (Please Print):

Pursuant to AA 831 it states under (E.) Medical: (13) "The inmate must be afforded an opportunity to speak in his/her own behalf and submit ANY DOCUMENTARY EVIDENCE EXCLUDING WITNESS STATEMENTS."

MS. Smith contradicted such policy by denying me my right to submit evidence against allegations alleged against me. I also am now asking to be allowed to be protected by such above name policy and allow to submit such evidence. By me not being allowed to submit such evidence would deny me of my fair and impartial hearing all in fault of MS. Smith MY documents does have something to do with the state documents against me that has been prepared against me because G. Hunter brought up the incident that my documents (state documents) in request to submit to the above hearing officer, strictly deals with such acts are bias and prejudice as well.

I feel that i am not being given a fair proceeding due to the above allegations just as well as MS. Smith's attempt to commit a violation of AA 10-19 "Employee Conduct" when she falsly stated on state documents, that i refused to sign, when in all actuality she never even asked me to sign, i just so happen was aware of serving officials pattern of falsly stating Refuse To Sign.

Detrick D. Creston  
Inmate Signature

August 31, 2012  
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 8-31-12 (date), and determined to be Step One and/or an Emergency Grievance NO (Yes or No). This form was forwarded to medical or mental health? NO (Yes or No). If yes, name of the person in that department receiving this form: \_\_\_\_\_ Date \_\_\_\_\_

S. Abernathy 7587 Abernathy 8-31-12  
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: Witnesses include any inmates, employees, and/or free world persons who have firsthand knowledge of the interaction.

CPJ L. Smith 8-31-12 Detrick D. Creston 8/31/12  
Staff Signature & Date Returned Inmate Signature & Date Received

This form was received on 9-6-12 (date), pursuant to Step Two Is it an Emergency? NO (Yes or No)

Staff Who Received Step Two Grievance: Tucker Date: 9-6-12

Action Taken: Forward (Forwarded to Grievance Officer/Warden/Other) Date: 9-6-12

If forwarded, provide name of person receiving this form: NO STAFF Date: 9-6-12



"Exhibit C"

W-15

IGTT410  
3GS

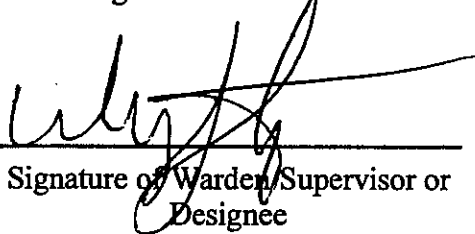
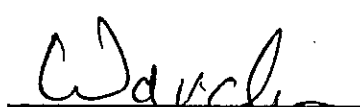
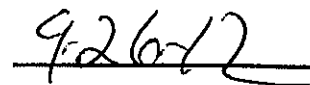
Attachment III

INMATE NAME: Croston, Detrick D. ADC #: 131172A GRIEVANCE #: MX-12-02487

**WARDEN/CENTER SUPERVISOR'S DECISION**

I have reviewed your grievance dated 08/31/12. You allege in your grievance that staff violated policy by not allowing you to submit evidence for your disciplinary.

Unit records reflect that you received a disciplinary. Disciplinary matters are not grievable. You do have access to the appeal process. I can find no evidence of any staff misconduct. Therefore, I find this grievance without merit.

		
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?

UNIT LEVEL GRIEVANCE FC 1 (Attachment I)

Unit/Center M.S.U.

RECEIVED

FOR OFFICE USE ONLY	
GRV. #	<u>MX-12-2584</u>
Date Received:	<u>9/14/12</u>
GRV. Code #:	<u>400</u>

Name Detrick D. Croston SEP 14 2012

ADC# 131172 Brks # W-150-15 Job Assignment Unit  
Maximum Security Unit

9-4-12 (Date) STEP ONE: Informal Resolution

9-4-12 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: PER AR-835, all retaliation claims are to be straight to Unit Warden as a Step 2 Grievance.

(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, place, name of personnel involved and how you were affected. (Please Print): On the 4th day of September 2012, I suffered a form of retaliation and per AR 835 "Inmate Grievance Policy and Procedures" such form of complaint is to be immediately addressed by the Warden, wherefore I am addressing this to Warden Straight, for his viewing. On the above mentioned date, I was forced to be reviewed in a hearing by DMO Minnie Drayer, whom I have an civil rights complaint against in the U.S. Dist. Court that was filed in January 2010 under Croston vs. Morris, No. 5:09cv 373, due to denial of due process. Ms. Drayer again refused to follow AR 831 under (VII)(E)(13) by denying me my right to present documentary evidence against allegations alleged against me in the body of an F-831-1 form, when I ask to produce such documents as allowed by policy. Ms. Drayer refused me in the presence of % Brown, % Smith, % Boeswell and the recorder tape. She stated, I ain't trying to hear now of that.

Ms. Drayer had no right to disregard AR 831 and by doing so simply showed her acts of bias and prejudice acts against me out retaliation because of the civil rights complaint I filed against her. Such acts caused me to be denied of an fair and impartial hearing and she should not have been the DMO over my disciplinary hearing.

Detrick D. Croston  
Inmate Signature

September 4, 2012  
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 9-7-12 (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 \_\_\_\_\_

Jill K. Overkirk 6320 Kenneth Cook 9-7-12  
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: disciplinarily is a non grievable matter.

Kenneth Cook 9-10-2012 Detrick D. Croston 9-10-2012  
Staff Signature & Date Returned Inmate Signature & Date Received

This form was received on 9-14-12 (date), pursuant to **Step Two**. Is it an Emergency? NO (Yes or  No). Staff Who Received Step Two Grievance: Sgt L Chedeston Date: 9-14-12  
Action Taken: Forwarded (Forwarded to Grievance Officer/Warden/Other) Date: 9-14-12  
If forwarded, provide name of person receiving this form: Mrs. Evans Date: 9-14-12

Exhibit D

W-15

IGTT410  
3GS

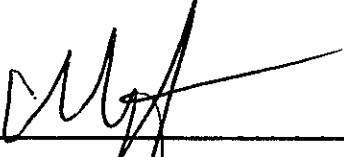
Attachment III

INMATE NAME: Croston, Detrick D. ADC #: 131172A GRIEVANCE #: MX-12-02584

**WARDEN/CENTER SUPERVISOR'S DECISION**

I have reviewed your grievance dated 09/04/12. You allege in your grievance that staff retaliated against you by forcing you to have a disciplinary hearing with staff that is named in your lawsuit.

Unit records reflect that your disciplinary and your appeal was processed according to policy. Disciplinary matters are not grievable. This issue was also addressed in MX-12-2487. I can find no evidence of any staff misconduct. Therefore, I find this grievance without merit.

  
\_\_\_\_\_  
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?**

A.C.A. § 12-29-202

West's Arkansas Code Annotated Currentness

Title 12. Law Enforcement, Emergency Management, and Military Affairs

Subtitle 3. Correctional Facilities and Programs (Chapters 25 to 59)

Chapter 29. Inmates of State Facilities

Subchapter 2. Good Time Allowance (Refs & Annos)

→ § 12-29-202. **Classification committee--Classifications**

(a)(1) There is established a classification committee to be defined by administrative regulations approved by the Board of Corrections.

(2) Members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Department of Correction and Department of Community Correction per board regulation governing their selection.

(3) This committee shall meet as often as necessary to classify the inmates into no more than four (4) classes according to good behavior, good discipline, medical condition, job responsibilities, and involvement in rehabilitative activities.

(b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitative activities may earn up to one (1) day for every day served as a reduction toward his or her transfer eligibility date for each day incarcerated after the imposition of sentence.

(2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary action shall not be entitled to earn meritorious good time.

(3) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.

(c) An inmate may be reclassified as often as the committee deems necessary or in accordance with current board regulations to carry out the purpose of this subchapter and to maintain good discipline, order, and efficiency at the units, facilities, or centers.

(d)(1) Upon recommendation of the committee, the Director of the Department of Correction may award an amount of meritorious good time sufficient to reduce incarceration time by up to ninety (90) days, not to exceed a total of three hundred sixty (360) days, for each successful completion of a:

(A) State-sponsored general education development certificate program;

(B) Vocational program for which certification is awarded;

(C) Drug or alcohol treatment program offered at a Department of Correction facility; or

(D) Pre-release and other rehabilitative programs or assignments as approved by the Board of Corrections.

(2)(A) The additional days of meritorious good time described in subdivision (d)(1) of this section shall be awarded pursuant to rules promulgated by the board.

(B) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Meritorious good time awarded under subdivision (d)(1) of this section shall not be applicable to

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 5,000.00

Claim No. 13-0231-CC

<u>Detrick Croston, #131172</u> vs. <u>Department of Correction</u> State of Arkansas	Claimant  Respondent	<b>Attorneys</b> <u>Pro se</u>  <u>Lisa Wilkins, Attorney</u>	Claimant  Respondent
<u>Date Filed September 11, 2012</u>		<u>Type of Claim Failure to Follow Procedure</u>	

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1, 3, 4 & 5 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1, 3, 4 & 5 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing January 11, 2013

Before the Arkansas State Claims Commission

Detrick D. Croston

vs.

No. 13-0231

Arkansas Claims Commission

FEB 01 2013

RECEIVED

Arkansas Department of Corrections

Notice of Appeal  
and  
Designations of Record

Comes now the claimant, Detrick D. Croston, proceedings pro se and gives Notice of Appeal from the above mentioned Court and prays appeal to the General Assembly. This appeal is from the dismissal by Commission on January 11, 2013 entered of record.

Claimant designates the entire record of proceedings, all evidence, all pleadings, the court file and any other parts of the record of the case not specifically set forth herein for purposes of appeal. Claimant requests that the Arkansas State Claims Commission prepare the records and forward claimant a copy of such transcript.

Wherefore, Claimant prays appeal to the Arkansas General Assembly, that the clerk of the State Claims Commission forthwith prepare the record and transmitt same, with its transcript to the Arkansas General Assembly and advise claimant when such is done. This appeal is being brought pursuant to § 19-10-211.

State of Arkansas

Arkansas Claims Commission

County of Jefferson

FEB 01 2013

RECEIVED

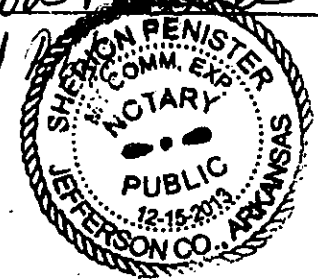
After being duly sworn, the undersigned affiant deposes and swears, under oath, that the appeal taken herein is for the purpose that justice may be done unto the claimant and not for the purpose of delay.

Debrah D. Profford

Subscribed and Sworn To, before me, a Notary Public, in and for the State and County aforesaid, on this 28<sup>th</sup> day of January 2013

*Sherron Penister*

Notary



Certificate of Service

I certify that a copy of the above and foregoing Pleading was this 28<sup>th</sup> day of January 2013, mailed to the below listed at the address indicated with sufficient postage attached.

Norman L. Hodges  
101 East Capitol Ave.  
Little Rock, Ark 72201

General Assembly  
State Capitol  
500 Woodlawn  
Little Rock, Arkansas 72201