

Please note that all sections must be completed, or this form will be returned to you, which will delay the processing of your claim.

1. Claimant's Legal Counsel - (If representing yourself (Pro Se) please check this box and proceed to section 2)

(last name)

(first name)

(email)

(address)

(city)

(state)

(zip)

(primary phone)

Arkansas Bar Number: _____

If not licensed to practice law in Arkansas, please contact the Claims Commission for more information.

2. Claimant

Mr. Wine Mitchell

(title/last name/first name or company)

(email)

(address)

(city)

(state)

(zip)

(primary phone)

3. State Agency Involved: (must be an Arkansas state agency. The Arkansas Claims Commission has no jurisdiction over county, city, or other municipalities)

Arkansas State Board of Election Commissioners

(state agency involved)

4. Incident Date

2/19/2020

5. Claim Type

Other

Please provide a brief explanation of your claim. If additional space is required please attach additional statements to this form.

The claim is fully explained in an attachment to this complaint transmitted to the Arkansas State Claims Commission.

5a. Check here if this claim involves damage to a motor vehicle.

5b. Check here if this claim involves damage to property other than a motor vehicle.

All property damage claims require a copy of your insurance declarations covering the property or motor vehicle at the time of damage.

I did not have insurance covering my property/motor vehicle at the time of damage.

All property damage claims require ONE of the following (please attach):

- 1. Invoice(s) documenting repair costs, OR**
- 2. Three (3) estimates for repair of the damaged property, OR**
- 3. An explanation why repair bill(s) or estimate(s) cannot be provided.**

6. Was a state vehicle involved? (If Yes, please complete the following section)

(type of state vehicle involved)

(license number)

(driver)

7. Check here if this claim involves personal injury.

All personal injury claims require a copy of your medical insurance information in place at the time of the incident.

I do not have health insurance

8. Amount Sought: \$15,000.00 _____

(Signature)

(Date)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 201096

**STATE BOARD OF ELECTION
COMMISSIONERS**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by State Board of Election Commissioners (the “Respondent”) to dismiss the claim of Mitchell Wine (the “Claimant”). Also pending before the Claims Commission is Respondent’s motion to stay discovery. Based upon a review of the motions, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on May 26, 2020, seeking \$15,000.00 in damages based upon the actions of various individuals, including Respondent’s attorney and the election commission chair for Stone County. Claimant alleges that the complaint filed by the Stone County election commission chair against him is unlawful and frivolous. Claimant alleges that the attorney for Respondent has harassed Claimant, tried to “besmirch his character,” and wrongfully investigated him. Claimant also alleges that:

The complaint filed against Claimant is frivolous and was borne out of an attempt to silence him on election issues where he was pointing out actual fraud and corruption by local officials.

Respondent is aware that Claimant is successfully litigating the state in other matters and is engaged in reprisal through intentional infliction of emotion distress via violations of Claimant’s Fourth Amendment right protecting him from unreasonable searches and seizures. Respondent has no reason to investigate Claimant because there has been no violation of law by Claimant and none was alleged in the complaint lodged against him.

...

Claimant became so upset that he was unable to attend the special election results on May 12, 2020. Claimant is unable to perform his duties as election commissioner if he is to be subjected to unreasonable searches such as the one being carried out against him presently by Respondent and Respondent's actions are outrageous and have resulted in harm.

See Claimant's Complaint at ¶¶ 9–10, 12. In addition to monetary damages, Claimant requests that the Claims Commission issue an injunction as to Respondent's investigation of him and order Respondent to issue "a public apology for the outrageous intrusion"

2. Respondent filed a motion to dismiss, arguing that Claimant's claim must be dismissed because there is no cause of action for an "unwarranted investigation." Respondent also argued that dismissal is proper pursuant to Ark. R. Civ. Proc. 12(b)(8) because Claimant is "actively pursuing his due process rights before the SBEC Board by refusing the offer of settlement with a finding of election law violation [and] by requesting a public hearing on the matter." Alternatively, Respondent requested that Claimant be required to provide a more definite statement of the legal theory forming the basis of this action pursuant to Ark. R. Civ. Proc. 12(e).

3. Claimant responded to the motion to dismiss, stating the following with regard to his causes of action:

Claimant clearly stated causes of action as the tort of Intentional Infliction of Emotional Distress and Fourth Amendment (unwarranted search and seizure) violations in paragraph 10 of his complaint.

4. Claimant filed numerous electronic correspondence on July 22–23, 2020, related to the actions of other individuals, Respondent's lack of probable cause to investigate him, and the fact that he does not have a hearing date before Respondent.

5. On July 24, 2020, Respondent filed a motion to supplement the record to provide information to the Claims Commission regarding the hearing scheduled on the complaint filed with Respondent.

6. That same day, Claimant filed a response to the motion to supplement record, arguing that the motion should be denied because Respondent previously stated that it was resting on its filings.

7. On July 31, 2020, Claimant filed electronic correspondence alleging criminal actions on the part of Respondent's attorney and others.

8. On August 3, 2020, Claimant filed a motion to compel discovery.

9. On August 7, 2020, Respondent responded to the motion to compel discovery, arguing, *inter alia*, that it was awaiting a ruling by the Claims Commission on its pending motion to dismiss.

10. On August 10, 2020, Claimant filed electronic correspondence, alleging criminal actions on the part of Respondent's attorney.

Findings of Fact and Conclusions of Law

11. With regard to Claimant's request for injunctive relief, the Claims Commission is not authorized to provide such relief to a requesting party. Only a court of general jurisdiction can provide that relief.

12. With regard to Claimant's request that the Claims Commission order Respondent to publicly apologize, the Claims Commission is not authorized to provide such relief.

13. With regard to Respondent's motion to dismiss, when a party argues that dismissal is proper pursuant to Ark. R. Civ. Proc. 12(b)(6), the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380

S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not “a plaintiff’s theories, speculation, or statutory interpretation.” *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

14. The Claims Commission agrees with Respondent that there is no recognized cause of action for an unwarranted investigation.

15. To the extent that Claimant is attempting to file a claim for the intentional infliction of emotional distress, the Claims Commission finds that Claimant did not state facts to support such a claim under Arkansas law.

16. The elements required to establish a claim for intentional infliction of emotional distress (also known as the tort of outrage), are:

(1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was extreme and outrageous, was beyond all possible bounds of decency, and was utterly intolerable in a civilized community; (3) the actions of the defendant were the cause of the plaintiff’s distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it.

Key v. Coryell, 86 Ark. App. 334, 185 S.W.3d 98 (2004) (citing *Crockett v. Essex*, 341 Ark. 558, 19 S.W.3d 585 (2000)). As the Arkansas Supreme Court stated in *Crockett*, “a narrow view” is given to these claims, and “clear-cut proof” is required to establish the elements. 341 Ark. 558, 564, 19 S.W.3d 585, 589. As stated by the Arkansas Supreme Court in *Renfro v. Adkins*, 323 Ark. 288, 299, 914 S.W.2d 306, 312 (1996), “[m]erely describing the conduct as outrageous does not make it so.” Similarly, in *Crockett*, the Arkansas Supreme Court noted that “the tort of outrage should not and does not open the doors of the courts to every slight insult or indignity one must endure in life.” *Id.*¹

¹ As an example of what is not considered outrage, in *Sterline Drug, Inc. v. Oxford*, 294 Ark. 239, 743 S.W.2d 380 (1988), the Arkansas Supreme Court held that an employer’s “systematic campaign . . . [over an 18 month period] designed to force” an employee to resign did not support a claim for outrage,

17. While Claimant did provide other information and facts in his response to the motion to dismiss, the Claims Commission is only permitted to review the allegations in Claimant's complaint to determine the sufficiency of the complaint. *See Godwin v. Churchman*, 305 Ark. 520, 810 S.W.2d 34 (1991).

18. The Claims Commission finds that the fact that Respondent is investigating a complaint filed against Claimant does not rise to the level of intentional infliction of emotional distress. Investigating potential election law violations is part of Respondent's responsibilities. To the extent that Claimant disagrees with the complaint, it appears that Claimant will have an opportunity at the scheduled hearing before Respondent's board to present his disagreements.

19. To the extent that Claimant believes the actions of any individual to be criminal, Claimant should contact his local law enforcement office or prosecuting attorney's office.

20. To the extent that Claimant believes the actions of any individual to violate Claimant's constitutional rights, Claimant may bring a civil rights claim in a court of general jurisdiction.

21. As such, the Claims Commission GRANTS Respondent's motion to dismiss pursuant to Ark. R. Civ. Proc. 12(b)(6) and DISMISSES Claimant's claim.

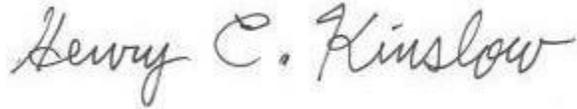
22. All other pending motions are hereby rendered moot.

even though there was "ample evidence" that the employer knew the employee was under "severe pressure because of a recent divorce."

Another example can be found in *Crockett v. Essex*, 341 Ark. 558, 19 S.W.3d 585 (2000), where the Arkansas Supreme Court found that no outrage existed where a funeral home's employees were alleged to have rushed a funeral service, driven the hearse too fast on the highway, driven a "disabled family member [to the graveside] by car over the graves of unknown persons," and talked on a cell phone "for a prolonged period of time during the burial."

In *Neff v. St. Paul Fire & Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990), the Arkansas Supreme Court held that a hospital's actions did not amount to outrage where the hospital released the body of a stillborn baby to the father, who was intoxicated and later arrested for driving under the influence, and directed the mother to recover the baby's body from the sheriff's office.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: August 17, 2020

Notice(s) which may apply to your claim

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

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MITCHELL WINE

CLAIMANT

V.

CLAIM NO. 201096

**STATE BOARD OF ELECTION
COMMISSIONERS**

RESPONDENT

**ORDER ON CLAIMANT'S
MOTION FOR RECONSIDERATION**

Now before the Arkansas State Claims Commission (the “Claims Commission”) are eight separate electronic correspondences submitted by Mitchell Wine (the “Claimant”), one of which requests that the Claims Commission “construe my previous emails as a request for reconsideration from [sic] this glaringly errant ruling.” Claimant’s claim against the State Board of Election Commissioners (the “Respondent”) was dismissed pursuant to Ark. R. Civ. Proc. 12(b)(6) on August 17, 2020. Based upon a review of the pleading, the arguments made therein, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. Claimant filed his claim on May 26, 2020, seeking \$15,000.00 in damages based upon the actions of various individuals, including Respondent’s attorney and a fellow election commissioner from Stone County, related to a complaint made against Claimant with Respondent.

2. Respondent filed a motion to dismiss, arguing, *inter alia*, that dismissal is proper pursuant to Ark. R. Civ. Proc. 12(b)(6). The Claims Commission agreed and granted Respondent’s motion to dismiss on August 17, 2020.

3. Subsequently, but also on August 17, 2020, Claimant sent three emails to the Claims Commission and Respondent’s attorney taking issue with Respondent’s analysis of a particular statute. Claimant also asserted that Respondent’s attorney is “engaged in fraud” and that Respondent engaged in coercion.

4. Also on August 17, 2020, Claimant sent an email to the Claims Commission and Respondent's attorney, in which he advised the following to an unspecified person:

You need to rule in this matter granting me the relief I've requested so that I can seek further relief regarding the physical assault I recently endured as a result of SBEC misconduct. You're not putting your hands on me through your subordinates/affiliates any longer without significant repercussions. Do you have any questions about what I mean when I say "serious repercussions?" I'll preface any answer by stating I mean nothing unlawful. I will only use force as permitted by law and only if you refuse to settle things amicably. You should not have violated my physical safety in this matter. Inaction in this regard is definitely crossing a huge line.

(emphasis added).

5. Also on August 17, 2020, Claimant sent an email to the Claims Commission and Respondent's attorney, in which he told the Claims Commission director, "Ms. Irby, you need to reopen this on your own motion."

6. Also on August 17, 2020, Claimant sent an email to the Claims Commission and Respondent's attorney clarifying that the previous emails should be construed "as a request for reconsideration from [sic] this glaringly errant ruling."

7. Also on August 17, 2020, Claimant sent an email to the Claims Commission and Respondent's attorney noting that he is "not expecting a different answer . . . [and] just want[s] to get this appealed to the rocket scientists in our legislature in September."

8. On August 18, 2020, Claimant sent an email to the Claims Commission, Respondent's attorney, and Respondent's director, advising the following to an unspecified person or persons:

Also, I will be making citizen's arrests in this matter. I've been given the go ahead on that from Larry Jegley's Office. To the degree anyone has committed a felony and doesn't want me to pursue them into their homes, you should talk to LE or the prosecutor.

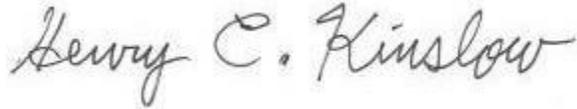
9. In analyzing a motion for reconsideration, Rule 7.1 of the Claims Commission Rules and Regulations states that motions for reconsideration “will only be entertained if they set forth new or additional evidence which was not [previously] available”

10. The Claims Commission finds that the motion does not set forth new or additional evidence not previously available.

11. To the extent that Claimant believes that the Claims Commission director has the authority to reopen a file or to file a motion in a claim, Claimant is wrong.

12. As such, Claimant’s motion for reconsideration is DENIED, and the August 17, 2020, Claims Commission order remains in effect. However, the Claims Commission construes Claimant’s final August 17, 2020, email, as a notice of appeal and will transfer this appealed claim to the Arkansas General Assembly pursuant to Ark. Code Ann. § 19-10-211.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: August 19, 2020

Notice(s) which may apply to your claim

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- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).