

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

JUL 09 2018

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Corbitt Law Firm, PLLC

Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

RECEIVED

Claim No. _____

Date Filed _____

(Month)

(Day)

(Year)

Amount of Claim \$ _____

Fund _____

COMPLAINT

Corbitt Law Firm, PLLC

(Name)

the above named Claimant, of PO Box 4368, Little Rock, AR 72214

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

(City)

County of Pulaski

represented by

Chris P. Corbitt

(Legal Counsel, if any, for Claim)

(State)

(Zip Code)

(Daytime Phone No.)

of PO Box 4368, Little Rock, AR 72214

(Street and No.)

(City)

(State)

(Zip Code)

501-907-2727

(Phone No.)

888-838-9096

(Fax No.)

says:

State agency involved: Univ. of Ark. at Little Rock, Bowen School of Law Amount sought: \$15,000

Month, day, year and place of incident or service: Aug. 11, 2016 - May 14, 2018 Robert Steinbuch Ark. Freedom of Information Claim

Explanation: Pulaski County Circuit Court Case No. 60CV-15-5690 involved a Ark. Freedom of Information Act Claim against the Univ. of Ark. at Little Rock, Bowen Law School, for violation of said act. This case was dismissed with a negotiated settlement of the Ark. Freedom of Information violation. See attached Order of Dismissal. Exhibit "A". A copy of legal fees has been submitted herewith and is attache as Exhibit "B".

Plaintiff, substantially prevailed in the FOIA litigation; therefore, pursuant to Arkansas Law attorney's fees and Ark. Code Ann. 25-19-107(d)(1) "the court shall assess against the defendant reasonable attorney's fees ad other litigation expenses reasonably incurred by plaintiff who has substantially prevailed".

Respectfully Submitted,

Chris P. Corbitt, Esq.

See attached.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
yes ; when? June 11, 2018 ; to whom? David Curran, Esq., by email: dcurran@uasys.edu
(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? no ; if so, state name and address

(Name)

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

(City)

(State)

(Zip Code)

and that the nature thereof is as follows:

: and was acquired on

, in the following manner:

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

Chris P. Corbitt

(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Little Rock

AR

(City)

(State)

on this

9th

day of

July

2018

(Date)

(Month)

(Year)

(Notary Public)

My Commission Expires:

7

19

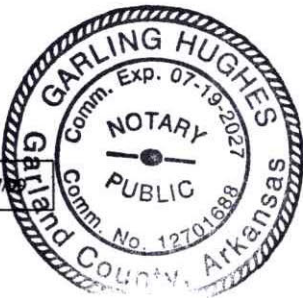
27

(Month)

(Day)

(Year)

(SEAL)



SF1-R789

Bachelors of Arts Chemistry
Bachelors of Arts Microbiology
Bachelor of Science in Civil Engineering
Master of Science in Civil Engineering
Professional Engineer: AR, TX, LA
www.corbittlawfirm.com



Chris P. Corbitt, PE, JD
P.O. BOX 4368
Little Rock, AR 72214
Office: (501) 907-2727
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Email: chris@corbittlawfirm.com

HAND DELIVERED

July 9, 2018

Arkansas State Claim Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201
Phone: (501) 682-1619
FAX: (501) 682-2823

RE: Corbitt Law Firm Claim for Attorney's Fees

Please find the attached notarized claim form in the required 8 ½ x 14 paper as stated on your website. The claim form has two attachments: the operative negotiated dismissal order of my clients Arkansas Freedom of Information cause of actions (exhibit A) and my invoice (exhibit B). I have also submitted a digital copy of the pleadings on a thumb drive with a table of contents.

With thanks for your attention, I am

Cordially,

/s/ Chris P. Corbitt

Chris P. Corbitt
Attorney at Law

Cc: David Curran
Opposing Claimant
Counsel for the University of Arkansas
Via google drive at the following link:

<https://drive.google.com/open?id=1n2tKjD-vozz6Bfx4WT1zX1X-rRtpgFTz>

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For
Claims Commission Filing

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

ROBERT STEINBUCH

PLAINTIFF

v.

No. 60CV-15-5690

UNIVERSITY OF ARKANSAS et al.

DEFENDANTS

ORDER

The Court has been notified that Plaintiff and the UALR Defendants have negotiated a settlement and resolved the FOIA claim. Therefore, the Court rules as follows:

1. Count I of the operative complaint is hereby dismissed with prejudice.
2. Because the Court has dismissed the FOIA claim pursuant to the preceding paragraph, the Court finds that there is no longer a need for a class of graduates of UALR Bowen School of Law to participate in this case. The putative class representatives, Evelyn Gomez and Misty Peltz-Steele, are hereby dismissed as separate defendants in this action. In addition, there is no need for an attorney for a putative class to participate as counsel in this case.

3. The Court expresses no view on whether Plaintiff should recover attorneys' fees under FOIA. Resolution of that issue properly rests with the State Claims Commission under Ark. Code Ann. § 25-19-107(e), Ark. Code Ann. § 19-10-204(d), and Article V, § 20, of the Arkansas Constitution. Nothing in this order is

intended to operate as a bar to Plaintiff's ability to file a claim for attorneys' fees in the Claims Commission or Defendants' ability to contest such a claim.

It is SO ORDERED on this 14th day of May, 2018.

A handwritten signature in black ink, consisting of several loops and a trailing flourish, positioned above a horizontal line.

Hon. Timothy D. Fox,
Pulaski County Circuit Judge

Approved by:

/s/ Chris P. Corbitt

Attorney for Plaintiff

and

/s/ David A. Curran

Attorney for the UALR Defendants

Corbitt Law Firm
P.O. Box 4368
Little Rock, AR 72214
Telephone: 501-907-2727
Fax: 888-838-9096

June 4, 2018
Invoice No. 1

Robert Steinbuch

Attn: Robert Steinbuch
Client No. [REDACTED]
Matter FOIA Request Litigation

For Services Rendered Through June 4, 2018
Matter CV-15-5690 Pulaski County Circuit Court

Services

Total
Hours

<u>Date</u>	<u>Description</u>	<u>Hours</u>
8/10/2016	review of case file	4.5
8/11/2016	entry of appearance	0.2
8/19/2016	review prep and file 4th amended complaint	9
8/29/2016	review of answer	1.5
8/30/2016	review of notice of removal to federal court	1.5
9/1/2016	prepare and file summons	0.3
For Services Rendered Through		
Matter	CV-15-5690	AR Supreme Court
7/14/2016	email and response to Dcurran about FOIA	0.5
7/15/2016	email and response to Rsteinbuch about FOIA	0.3
7/18/2016	email and response to Dcurran about FOIA student data	0.2
7/20/2016	email and response to Dcurran	0.1
7/20/2016	entry of appearance	0.2
7/20/2016	review of record and motion to dismiss research and response	1.7
7/27/2016	prepare and file motion to strike	3.5
8/5/2016	email and response to Dcurran about FOIA student data	0.2
8/29/2016	email and review of correspondence with Dcurran on FOIA data	0.3
8/15/2016	email and settlement about FOIA student data	0.3
8/16/2016	dicussions with Rsteinbuch about FOIA data	0.5
8/30/2016	review of motion to stay	0.5
8/30/2016	review of emails and case file and phone call	1.7
9/21/2016	review of FOIA data sent by Dcurran	1.5

9/22/2016 order to stay granted	0.2
9/29/2016 discussions with Rsteinbuch on FOIA data	2.2
10/28/2016 discussions with Dcurran on FOIA dismissal	0.5
10/29/2016 discussions with Rsteinbuch on FOIA data	0.3

For Services Rendered Through
Case Removed to Federal Court
Matter CV-15-5690 Federal Court

8/30/2016 review of notice and removal and complaint	0.5
8/30/2016 review of motion to dismiss and brief	0.5
9/1/2016 draft motion to remand, motion for extension of time and brief	4.5
9/2/2016 draft motion to remand, motion for extension of time and brief	5.2
9/14/2016 response to Motion to Dismiss, research filed motion for ext. of time	9.5
9/15/2016 review of order granting extension of time	0.5
9/16/2016 review of response	0.5
12/16/2016 review of circuit court order to administratively close case	0.2

For Service Rendered through
Case Remanded back to Circuit Court

8/31/2017 review of federal court order to remand	2.5
10/13/2017 Review of Motion to Dismiss	1.3
10/27/2017 Response to Motion to Dismiss	3.2
10/30/2017 Reivew of reply to response to Motion to Dismiss	0.5
11/7/2017 Order for Hearing	0.2
11/8/2017 Proof of service from federal court	0.2
11/10/2017 4th Amended complaint	3.5
11/13/2017 Review Motion to Dismiss, Motion to Strike, Letter to Court	4.6
12/7/2017 Draft Motion to Clarify and file	1.5
1/3/2018 review of order denying motion to clarity	0.5
1/9/2018 Notice of Appeal to Ark. Supreme Court	1.5
1/26/2018 review FOIA data and email with Dcuraan	0.2
1/29/2018 email and review of FOIA Data with Dcurran	0.8
2/8/2018 Review Supreme Court Dismissal	0.5
2/2/2018 5th Amended complaint	2.5
2/20/2018 review of answer, motion to dismiss and motion to strike	4.5
2/20/2018 dicussion about FOIA data emails with Dcurra	1.5
3/9/2018 draft response to motion to dismiss	2.4
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3/17/2018 discussions with Rsteinbuch on FOIA data and dismissal	0.5
3/20/2018 6th amended complaint	0.2
4/6/2018 hearing on motion to dismiss	0.2
4/9/2018 review of answer filed to 6th amended complaint	0.2

5/2/2018 FOIA dismissal	0.2
5/14/2018 reivew of FOIA claim dismissal	0.5
6/1/2018 order to dismiss all claims with prejudice	1.2
	88.5

Costs	Transcript	\$	131.75
	record	\$	742.25
	Filing Fees	\$	370.00
	Hourly Rate		\$275.00
	Prior Balance:	\$	-
	Payments Received:	\$	-
	Costs	\$	1,244.00
	Current Fees:	\$	24,337.50
	Discount 44%	\$	(10,598.98)
		\$	14,982.52

Please make check payable to Corbitt Law Firm, PLLC
Thank You for Letting Us Serve You.
Payment Due Upon Receipt.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

CORBITT LAW FIRM, PLLC

CLAIMANT

V.

CLAIM NO. 190024

**UNIVERSITY OF ARKANSAS AT
LITTLE ROCK**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the University of Arkansas at Little Rock (the “Respondent”) for summary judgment as to the claim of the Corbitt Law Firm, PLLC (the “Claimant”). At the hearing held April 15, 2021, Claimant was represented by Robert Steinbuch, with Chris Corbitt also present. David Curran appeared on behalf of Respondent.

Background

1. In October 2015, Robert Steinbuch, a professor at the University of Arkansas at Little Rock Bowen School of Law, requested certain information from Respondent pursuant to the Arkansas Freedom of Information Act (FOIA). In November 2015, Steinbuch filed suit against Respondent in Pulaski County Circuit Court alleging FOIA violations (the “Underlying Lawsuit”).¹

2. While the Underlying Lawsuit eventually included a number of other claims, the FOIA portion of the Underlying Lawsuit was resolved by the parties voluntarily. On May 14, 2018, the Pulaski County Circuit Court entered an order dismissing Steinbuch’s FOIA claim with prejudice and stating the following as to attorney’s fees:

The Court expresses no views on whether Plaintiff should recover attorneys’ fees under FOIA. Resolution of that issue properly rests with the State Claims Commission under Ark. Code Ann. § 25-19-107(e), Ark. Code Ann. § 19-10-204,

¹ *Steinbuch v. Univ. of Ark., et al.*, Pulaski County Circuit Court Case No. 60CV-15-5690.

and Article V, § 20 of the Arkansas Constitution. Nothing in this order is intended to operate as a bar to Plaintiff's ability to file a claim for attorneys' fees in the Claims Commission or Defendants' ability to contest such a claim.

3. Claimant, as Steinbuch's counsel in the Underlying Lawsuit, filed this claim on July 9, 2018, seeking \$15,000 in attorney's fees pursuant to Ark. Code Ann. § 25-19-107(d)(1).

4. Respondent denied liability.

5. Respondent subsequently filed the instant motion for summary judgment, arguing (1) that Steinbuch did not obtain a ruling from the circuit court that he "substantially prevailed" in the FOIA portion of the underlying lawsuit as required by previous Claims Commission rulings in *Keech v. Arkansas State Police*² and *Shults v. Arkansas Department of Correction*³; (2) that the underlying lawsuit was primarily about non-FOIA issues; (3) that Steinbuch did not substantially prevail; and (4) that even if Steinbuch had substantially prevailed, Respondent was substantially justified in its position regarding Steinbuch's FOIA request.

6. Claimant filed a response to the motion for summary judgment and took issue with each of Respondent's arguments. As to whether Steinbuch failed to obtain a ruling from the circuit court, Claimant argued that the circuit court "expressed no view on whether Corbitt should recover attorney's fees because that issue was settled and negotiated between the parties by the University turning over the relevant data and the FOIA claim being dismissed." As to the Claims Commission's prior rulings in *Keech* and *Shults*, Claimant argued that these rulings were "wholly inapplicable." With regard to Respondent's argument as to the many claims involved in the Underlying Lawsuit, Claimant stated that the attorney's fees submitted reflected only efforts

² *Keech v. Ark. State Police*, Arkansas State Claims Commission, Claim No. 180019 (order entered June 27, 2018).

³ *Shults v. Ark. Dept. of Correction*, Arkansas State Claims Commission, Claim Nos. 180567 and 190250 (order entered October 18, 2018, affirmed by Arkansas General Assembly on February 21, 2019).

related to the FOIA claim. As to the question of whether Steinbuch substantially prevailed in the FOIA portion of the Underlying Lawsuit, Claimant noted that “nobody seriously engaged in FOIA matters believes that a court order is necessary” because a party about to lose in circuit court could simply turn over the requested records to avoid a fee award. Claimant also argued that Steinbuch did substantially prevail based upon the information disclosed by Respondent and that Respondent was not substantially justified in its position.

7. Respondent filed a reply brief, asserting that summary judgment is appropriate. Respondent noted again that the circuit court did not rule that Steinbuch substantially prevailed. Respondent also noted that Steinbuch did not seek a ruling from the circuit court that he substantially prevailed. As to *Keech*, Respondent argued that the Claims Commission has not left the parties “without recourse” because:

A FOIA plaintiff can (1) decline to settle the case so that there is a final judgment on the merits; (2) require, as a condition of settling, that the circuit court make a specific finding that he substantially prevailed (*i.e.*, a negotiated consent decree expressly stating that the plaintiff substantially prevailed); or (3) timely apply to the Circuit Court for a contested finding that he substantially prevailed, in the event that there is an agreement on the other terms and the parties wish to isolate their dispute to this single issue. And, if the Circuit Court simply refuses to address the matter, the FOIA plaintiff can appeal by arguing that a non-decision is reversible error.

Respondent noted that Claimant did “none of these things.”

8. Following a November 15, 2019, Claims Commission hearing on another pending motion, Claimant sent correspondence to the Claims Commission requesting that the Claims Commission “formally send the matter back to Circuit Court instructing the Circuit Court to decide the issue” if the Claims Commission would like “the Circuit Court [to] make further findings.” The Claims Commission entered an order on December 5, 2019, stating that the Claims Commission could not grant Claimant’s request because nothing in the statutes governing the Claims Commission or in the Arkansas Rules of Civil Procedure gives the Claims Commission

authority to send a case back to circuit court or to direct a circuit judge in any manner. The Claims Commission did give the parties a set amount of time to advise if either party would be asking the circuit court for further findings. On December 10, 2019, Claimant advised that it would be seeking further findings from the circuit court.

9. On September 24, 2020, Claimant notified the Claims Commission by correspondence that the circuit court “refused to address the issue and denied the motion without opinion.” Claimant also stated that the circuit court denied Claimant’s motion for reconsideration “without any opinion whatsoever.”

10. At the hearing, Respondent described Steinbuch’s FOIA request, the information that was eventually disclosed to Steinbuch, and Respondent’s disclosure analysis under the Family Educations Rights and Privacy Act (FERPA), FOIA, and various caselaw.

11. Claimant then argued its position as to Steinbuch’s FOIA request, the information eventually disclosed, and Respondent’s disclosure analysis. Claimant stated that the *Keech* and *Shults* orders were inconsistent with the Arkansas Court of Appeals decision in *Hyman v. Sadler*, 2018 Ark. App. 82, 539 S.W.3d 642, and that the Claims Commission should defer to the Arkansas Court of Appeals.

12. Respondent responded that *Hyman* does not squarely address the issue at hand.

13. Immediately following the hearing, Claimant sent correspondence to the Claims Commission setting out Ark. Code Ann. § 25-19-107(d)(1) and (e)(1) and citing to *Hyman* and Respondent’s analysis of *Hyman* during the Underlying Lawsuit.

14. Respondent responded, reiterating that *Hyman* does not “squarely address the Commission’s decision in *Keech* . . . which contemplated a role for the courts in making certain threshold findings.” Respondent also noted that *Keech* was decided by the Claims Commission after *Hyman* and, quoting *Seiz Co. v. Arkansas State Hwy. & Trans. Dept.*, 2009 Ark. 361, 324

S.W.3d 336, that “the interpretation placed on a statute or regulation by an agency or department charged with its administration is entitled to great deference and should not be overturned unless clearly wrong.”

15. Claimant replied, stating that the circuit court’s threshold findings in *Hyman* were found to be improper by the Arkansas Court of Appeals.

Applicable Law and Prior Precedent

16. Ark. Code Ann. § 19-10-204(a)(4)⁴ provides that:

The Arkansas State Claims Commission has jurisdiction over [a] claim or action to recover reasonable attorney’s fees and other litigation expenses reasonably incurred by a plaintiff who substantially prevails in an action under § 25-19-107 against the State of Arkansas or a state agency under the standard described in § 25-19-107(d)(1).

17. Pursuant to Ark. Code Ann. § 25-19-107(d)(1), a defendant may be liable for “reasonable attorney’s fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified.”

18. As previously found by the Claims Commission in *Keech*, *Shults*, and other claims, Ark. Code Ann. § 25-19-107(d)(1) must be read in conjunction with Ark. Code Ann. § 25-19-107(e)(2), which clarifies that where a plaintiff substantially prevails in a FOIA action against “the State of Arkansas or a department, agency, or institution of the state,” the claim for attorney’s fees

⁴ This claim was filed prior to the amendment of Ark. Code Ann. § 19-10-204 in 2019. The previous version of this subsection was found at Ark. Code Ann. § 19-10-204(d) and read as follows:

The commission shall have jurisdiction over claims to recover reasonable attorney’s fees and other litigation expenses reasonably incurred by plaintiffs who substantially prevailed in actions under § 25-19-107 against the State of Arkansas or a department, agency, or institution of the state under the standard described in § 25-19-107(d)(1).

and other litigation expenses must be filed with the Claims Commission. Ark. Code Ann. § 25-19-107(e)(1) specifies that a court cannot assess attorney's fees or litigation expenses against the State.

19. In *Hyman*, the Arkansas Court of Appeals considered whether the circuit court properly denied Hyman's request for attorney's fees related to his FOIA lawsuit. 2018 Ark. App. 82, *6-7, 539 S.W.3d 642, 645. The circuit court "denied attorney's fees, finding that although Mr. Hyman was the prevailing party, Mr. Sadler was substantially justified in his position." *Id.* at *2, 539 S.W.3d at 644. The Arkansas Court of Appeals affirmed the circuit court's decision but found that "[t]he statute does not allow the court to assess attorney's fees or litigation expenses against the State" because only the Claims Commission "may assess fees against the State to a prevailing plaintiff under FOIA." *Id.* at *7, 539 S.W.3d at 645.

20. Approximately four months after *Hyman*, the Claims Commission issued its decision in *Keech*, holding that:

. . . where a plaintiff prevails in a FOIA lawsuit against the State, unless the court rules that the State must disclose all documents or information sought by the plaintiff (thereby eliminating the question of whether the plaintiff "substantially prevailed"), the plaintiff should obtain a ruling by the court that it "substantially prevailed" pursuant to Ark. Code Ann. § 25-19-107(d)(1) in order to preserve its claim for attorney's fees.

(emphasis in original). As to the State, the Claims Commission held that where the State "is ordered to disclose documents or information by the courts, it is incumbent upon the State to seek a ruling from the court as to whether the State was "substantially justified" in refusing disclosure pursuant to Ark. Code Ann. § 25-19-107(d)(1)."

21. Following the Arkansas Court of Appeals decision in *Hyman*, Hyman filed a claim at the Claims Commission, seeking attorney's fees from the Arkansas State Police pursuant to

FOIA.⁵ The Arkansas State Police moved to dismiss based upon the circuit court’s finding that the Arkansas State Police was substantially justified in refusing disclosure, such that Hyman was not entitled to attorney’s fees. Hyman did not respond to the motion. The Claims Commission entered an order on October 22, 2018, finding that the Arkansas Court of Appeals “did not make any rulings altering the circuit court’s finding that . . . [the Arkansas State Police] was substantially justified in refusing disclosure” and that Hyman was not entitled to attorney’s fees based upon the circuit court’s finding that the Arkansas State Police was substantially justified in refusing disclosure. Hyman did not appeal the decision to the Arkansas General Assembly.

22. In October 2018, the Claims Commission entered an order as to both *Shults* claims, finding the circuit court’s rulings that Shults was the prevailing party and that the Arkansas Department of Correction (ADC) was not substantially justified in refusing disclosure to be determinative of Shults’ entitlement to attorney’s fees under Ark. Code Ann. § 25-19-107(d)(1) and (e)(2). ADC appealed the Claims Commission’s decision. On February 21, 2019, the Arkansas General Assembly affirmed the decision of the Claims Commission.

23. In May 2019, Christopher Burks filed a claim at the Claims Commission, seeking attorney’s fees from the Arkansas Department of Human Services pursuant to FOIA.⁶ At a hearing on a pending motion, Burks indicated that he would be seeking further findings from the circuit court. Burks later filed a copy of the order entered by the circuit court, in which Circuit Judge Tim Fox entered a one-paragraph order finding that Burks’ client was the substantially prevailing party

⁵ *Hyman v. Ark. State Police*, Arkansas State Claims Commission, Claim No. 180993 (claim filed May 26, 2018; order dismissing claim entered October 22, 2018).

⁶ *Burks v. Ark. Dept. of Human Services*, Arkansas State Claims Commission, Claim No. 191198.

in the FOIA lawsuit.⁷ Per the circuit court's finding that Burks' client was the substantially prevailing party, the Claims Commission held that:

The underlying lawsuit and the Claims Commission claim operate independently from one another, although the Claims Commission has previously held that, in the interest of consistency and judicial efficiency, it will not rehear what has already been litigated in circuit court and that it is incumbent upon the parties to seek specific findings from the circuit courts. Moreover, to the extent that Respondent believed that the circuit court did not have jurisdiction to issue further findings or that Respondent disagreed with additional findings, Respondent could have appealed that order. However, Respondent elected not to do so and cannot attempt to appeal the order through the instant claim.

(omitting internal citations).

24. As such, the Claims Commission's role is to evaluate the reasonableness of a claimant's attorney fees and costs and to make an award of reasonable attorney's fees and costs.

Summary Judgment Standard

25. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mutual Auto Insurance Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, "the burden then shifts to the nonmoving party to show that material questions of fact remain." *Flentje v. First National Bank of Wynne*, 340 Ark. 563, 569, 11 S.W.3d 531, 536 (2000). Summary judgment is useful "when there is no real issue of fact to be decided." *Hughes Western World, Inc. v. Westmoore Manufacturing Co.*, 269 Ark. 300, 301, 601 S.W.2d 826, 826 (1980).

⁷ Judge Fox's order read as follows:

On the 18[th] day of February, 2020, Plaintiff's *Motion for Determination of Prevailing Party per January 17, 2020 Claims Commission Order*, filed January 31, 2020, came on for consideration. Based upon the pleadings and all other matters properly before the court, the court finds that Plaintiff substantially prevailed, pursuant to Ark. Code Ann. § 25-19-107.

Findings of Fact and Conclusions of Law

Based on a review of the pleadings and argument of the parties, the Claims Commission hereby finds as follows:

26. The Claims Commission finds that Steinbuch filed the Underlying Lawsuit in Pulaski County Circuit Court against Respondent alleging violations of FOIA.

27. The Claims Commission finds that the parties voluntarily settled the FOIA portion of the Underlying Lawsuit.

28. The Claims Commission finds that there was no finding by the circuit court that Claimant was the substantially prevailing party.

29. The Claims Commission finds that there was no finding by the Circuit Court that Respondent was substantially justified in its position regarding disclosure of the requested information.

30. The Claims Commission finds that Claimant's analysis of *Hyman* is incorrect. The Arkansas Court of Appeals found that it was inappropriate for the circuit court to rule on Hyman's request for attorney's fees but did not find that it was inappropriate for the circuit court to make a decision regarding whether Hyman was the substantially prevailing party or whether the Arkansas State Police was substantially justified in refusing disclosure:

In this case, the court found that Mr. Hyman had substantially prevailed, but it determined that the defendant was substantially justified in his position and thus did not award fees. We affirm the circuit court's decision but not for the reasons set forth in its order. The statute does not allow the court to assess attorney's fees or litigation expenses against the State. In 2009, the legislature amended this statute so that only the Arkansas State Claims Commission may assess fees against the State to a prevailing plaintiff under FOIA.

2018 Ark. App. at *7, 539 S.W.3d at 645–46 (emphasis added). The result was the same, in that Hyman did not receive an award of attorney's fees. But the rationale differed based upon which venue was empowered to assess the attorney's fees.

31. In the instant claim, Claimant went back to circuit court and requested further findings. The fact that the circuit judge refused to make further findings that Claimant was the substantially prevailing party is significant, especially in light of the fact that the same circuit judge did issue further findings in the *Burks* claim.

32. In keeping with its previous rulings, the Claims Commission finds that, absent a finding by the circuit court that a FOIA plaintiff is the substantially prevailing party, an award of attorney's fees under Ark. Code Ann. § 25-19-107 is improper.

33. Based upon the Claims Commission's findings, *infra*, the Claims Commission agrees with Respondent that there are no genuine issues of material fact and that Respondent is entitled to summary judgment.

34. The Claims Commission hereby unanimously GRANTS Respondent's motion for summary judgment and DENIES and DISMISSES Claimant's claim.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris

DATE: April 21, 2021

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

CORBITT LAW FIRM, PLLC

CLAIMANT

V.

CLAIM NO. 190024

**UNIVERSITY OF ARKANSAS AT
LITTLE ROCK**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed the Corbitt Law Firm, PLLC (the “Claimant”) seeking reconsideration of the April 21, 2021, order entered by the Claims Commission granting the summary judgment motion filed by the University of Arkansas at Little Rock (the “Respondent”). 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. In November 2015, Robert Steinbuch filed a lawsuit under the Arkansas Freedom of Information Act (FOIA) against the University of Arkansas at Little Rock Bowen School of Law in the Pulaski County Circuit Court (the “Underlying Litigation”).¹ Claimant represented Steinbuch in the Underlying Litigation. After the parties voluntarily settled the FOIA portion of the Underlying Litigation, the circuit court entered an order on May 14, 2018, dismissing the FOIA claim with prejudice and stating that the “issue [of whether Steinbuch was entitled to recover attorneys’ fees] properly rests with the State Claims Commission. . . .”

2. Claimant filed a claim with the Claims Commission on July 9, 2018, seeking \$15,000.00 in attorney’s fees.

¹ *Steinbuch v. Univ. of Ark., et al.*, Pulaski County Circuit Court Case No. 60CV-15-5690.

3. Respondent filed a motion for summary judgment regarding Claimant's claim, arguing, *inter alia*, that Steinbuch did not obtain a ruling in the Underlying Litigation that he "substantially prevailed" on his FOIA claim, as required by previous Claims Commission rulings in *Keech v. Arkansas State Police*² and *Shults v. Arkansas Department of Correction*.³

4. Claimant responded, arguing, *inter alia*, that the attorney fee recovery was "settled and negotiated between the parties." As to the Claims Commission's prior rulings in *Keech* and *Shults*, Claimant argued that these rulings were "wholly inapplicable."

5. At a November 15, 2019, Claims Commission hearing on a motion filed by Claimant, Claimant requested that the Claims Commission "formally send the matter back to Circuit Court instructing the Circuit Court to decide the issue" if the Claims Commission would like "the Circuit Court [to] make further findings." The Claims Commission entered an order on December 5, 2019, stating, *inter alia*, that it could not grant Claimant's request because nothing in the statutes governing the Claims Commission or in the Arkansas Rules of Civil Procedure gives the Claims Commission authority to send a case back to circuit court or to direct a circuit judge in any manner.

6. On December 10, 2019, Claimant advised the Claims Commission that it would be seeking further findings from the circuit court, as set out below in pertinent part:

. . . According to the order dated of December 5, I will be asking the Circuit Court for further findings. Please consider this email as notice and hold my claim in abeyance for a period of 90 days. . . .

² *Keech v. Ark. State Police*, Arkansas State Claims Commission, Claim No. 180019 (order entered June 27, 2018).

³ *Shults v. Ark. Dept. of Correction*, Arkansas State Claims Commission, Claim Nos. 180567 and 190250 (order entered October 18, 2018, affirmed by Arkansas General Assembly on February 21, 2019).

7. On January 2, 2020, Steinbuch went back to the circuit court and filed a “Motion (1) for Contempt, (2) to Set Aside this Court’s and the Parties Agreed-Upon Order, and (3) to Show Cause, Resulting from the Fraud of Defendants” in the Underlying Litigation. On February 18, 2020, the circuit court denied “all parts” of the motion. On April 17, 2020, and September 24, 2020, the circuit court denied Steinbuch’s motions for reconsideration.

8. On September 24, 2020, Claimant notified the Claims Commission by correspondence that the circuit court “refused to address the issue and denied the motion without opinion.”

9. The Claims Commission then scheduled a hearing on Respondent’s motion for summary judgment for April 15, 2021.

10. Following the hearing, on April 21, 2021, the Claims Commission entered an order granting Respondent’s motion for summary judgment.

11. On April 22, 2021, Claimant submitted correspondence to the Claims Commission, disputing that Claimant “sought a substantive ruling from the Circuit Court on whether it was the prevailing party in the underlying litigation.” Claimant also stated that it would be filing a motion for such a ruling and asked that the claim be held in abeyance. Respondent objected to the abeyance, stating that Steinbuch’s January 2, 2020, motion referred to the issue of whether Steinbuch had substantially prevailed and that the circuit court denied the motion. Claimant replied, reiterating that Steinbuch’s January 2, 2020, motion did not seek a substantive ruling on the issue of whether Steinbuch had substantially prevailed.

12. On April 28, 2021, Steinbuch returned to circuit court again and filed a “Motion for Determination of Prevailing Party” in the Underlying Litigation. This motion was thoroughly briefed by the parties. On June 7, 2021, the circuit court denied the motion, stating:

On the 7th day of June 2021, Plaintiff's *Motion for Determination of Prevailing Party*, filed on April 28, 2021, came on for consideration. The court finds the request improper and untimely. If the *Motion* had been made in a timely manner, the only factual determination the court would have made would have been that the plaintiff caused a massive waste of judicial time and taxpayer monies. Plaintiff's *Motion for Determination of Prevailing Party* should be and hereby is denied.

(emphasis added). Steinbuch appealed the circuit court's ruling. On April 7, 2022, the Arkansas Supreme Court affirmed the circuit court's denial of the motion.

13. Following the filing of Steinbuch's Motion for Determination of Prevailing Party, Claimant also filed the instant motion for reconsideration reiterating the arguments in its April 22, 2021, correspondence – namely, that the Claims Commission “mistakenly asserts that Petitioner previously sought a ruling from the Circuit Court on whether it was the prevailing party in the underlying FOIA litigation.” Claimant also argued that its reference to the substantially prevailing/substantial justification issue in Steinbuch's January 2, 2020, circuit court filing was to suggest a possible sanction for Respondent, not to seek a substantive ruling on that issue.

14. Respondent opposed the motion for reconsideration, arguing that, after Steinbuch filed his January 2, 2020, circuit court motion, the parties “briefed the issue [of substantially prevailing/substantial justification] at length.” As to Claimant's December 10, 2019, notification to the Claims Commission that it would be seeking further findings from the circuit court, Respondent argued:

Moreover, Mr. Corbitt expressly told the Claims Commission, *via* email, that Steinbuch intended to go back to the Circuit Court to seek “further findings,” and the Commission held the case in abeyance while he did so. Surely Mr. Corbitt and Prof. Steinbuch do not mean to suggest that they sought a multi-month period of abeyance to request “further findings” and then intentionally omitted a request on what they perceive to be the central issue.

(emphasis added) (internal citation omitted).

15. 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”

16. The Claims Commission finds that the motion does not set forth new or additional evidence not previously available, such that Claimant’s motion for reconsideration should be denied. As part of the Claims Commission’s December 5, 2019, order, the Claims Commission stated that, if a party was going to seek further findings, the Claims Commission would “place this claim in abeyance for a period of 90 days.” Based upon Claimant’s notification that it was going to seek further findings, the Claims Commission placed the claim in abeyance for 90 days on December 11, 2019. However, according to Claimant, it did not seek a substantive determination from the circuit court as to whether Steinbuch was the substantially prevailing party until April 28, 2021, more than 500 days after the abeyance period began.

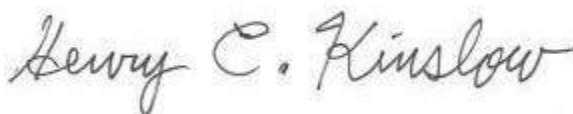
17. The Claims Commission finds that it is immaterial whether Steinbuch’s January 2, 2020, circuit court motion requested a substantive determination regarding the substantially prevailing party. If, as Respondent argued, the motion did include such a request, the motion was fully briefed by the parties and denied by the circuit court on February 18, 2020 (with the motions for reconsideration denied on April 17, 2020, and September 24, 2020). If, as Claimant argued, the motion did not include such a request, Claimant filed the motion and could have included such a request.

18. Moreover, in denying Steinbuch’s subsequent Motion for Determination of Prevailing Party, the circuit court found that even if the request had been timely, “the only factual determination the court would have made would have been that the plaintiff caused a massive waste of judicial time and taxpayer monies.” The Arkansas Supreme Court affirmed the circuit court’s ruling.

19. In keeping with its previous rulings, the Claims Commission finds that, absent a finding by the circuit court that a FOIA plaintiff is the substantially prevailing party, an award of attorney's fees under Ark. Code Ann. § 25-19-107 is improper.

20. As such, Claimant's motion for reconsideration is DENIED, and the April 21, 2021, Claims Commission order remains in effect.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: April 11, 2022

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).

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April 21, 2022

Arkansas Claims Commission
Little Rock, AR 72201
ATTN: Kathryn Irby

RE: Corbitt Law Firm v. University of Arkansas, Claim # 190024

Dear Ms. Irby,

This letter is to serve as petitioners filing of a Notice of Appeal with the Claims Commission pursuant to, *inter alia*, Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). Petitioner understands that a decision of the Claims Commission is appealed to the General Assembly pursuant to, *inter alia*, Ark. Code Ann. § 19-10-211(a)(3). Please let us know whether this Notice serves to inform the General Assembly or whether any additional action is necessary by the Petitioner.

Cordially,

/s/ Chris P. Corbitt
Chris P. Corbitt

/s/ Robert Steinbuch
Robert Steinbuch
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