

Arkansas
State Claims Commission

Dear ASCC,

MAR 23 2022

3-20-22

RECEIVED

I have enclosed a complaint against the Arkansas Division of Correction accompanied by five exhibits. I also sent one extra copy so the Commission can send me back a file mark copy.

Thank You in Advance.

Kwasi McKinney # [REDACTED]
[REDACTED]

MAR 23 2022

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

☒ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Kwasi McKinney # [REDACTED], Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

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

COMPLAINT

Kwasi McKinney

, the above named Claimant, of

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

State agency involved: Arkansas Division of Correction Amount sought: \$12,700

Month, day, year and place of incident or service: June 28, 2021

Explanation: On June 28, 2021 I was falsely accused by C/O Mrs. Genesis Richardson for allegedly exposing my penis to her. I was served a disciplinary by Sgt. Davis on June 30, 2021 on the alleged incident. Before I went to my disciplinary hearing I advised Sgt. Davis that I had a witness statement and sworn and notarized affidavit (Ex #2) written by Inmate Isaac Samuelson stating that Ms. Richardson's intentions was to write him up and that he is willing to take his own punishment. Ms. Davis did not except the affidavit or witness statement. On July 2, 2021 I was found guilty for indecent exposure and failure to obey a verbal order by hearing officer Ms. Janice Blake. I was placed in punitive isolation for 30 days, 15 days good time taken away and 60 days commissary, phone, and visitation restriction (Ex #3-4). My disciplinary was reviewed and reversed on July 26, 2021 by Deputy Warden Jackson (Ex #5). On July 28, 2021 I was released from isolation after serving 27 days on punitive/restriction. The 27 days that I spent in isolation I suffered from the heat and I also could not contact my family or go to commissary. Also I felt humiliated because I never had an indecent exposure charge on my record. I'm asking to be compensated \$100 for every day that I was in isolation on punitive/restriction.

I did not file a grievance because ADC policy does not allow inmates to grieve disciplinary matters. Pursuant to AR-831.

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

(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 believe that they are true.

Kwasi McKinney
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

(City)

(State)

on this 12 day of

march

2022

(Date)

(Month)

(Year)

Matthew Lyles

(Notary Public)

My Commission Expires:

4

23

2021
(Month) (Day) (Year)



ISSR100

Arkansas Department of Corrections

MAJOR DISCIPLINARY

If the C.S.O. determines that the violation(s) described on this document are felonious; he/she must hand carry this document to the Unit Warden who must immediately notify the Director.

Inmate: McKinney, Kwasi A

ADC#: [REDACTED]

Assignment: AM/PM:Ext Restrictive Housing

Class: I-C is being charged by Richardson, Genesis G
with code violation(s):

10-3 Indecent exposure; may result in a referral for criminal prosecution.
12-3 Failure to obey verbal and/or written order(s) of staff.

Date & Time: 06/28/2021 2:28 PM

Title: Corporal

Notice of Charges:

Incident Report Unit: [REDACTED]
Incident Report Date/Time: 06/28/2021/02:28:00 PM
Incident Report Number: 2021-06-173
Incident Report Comments By: Genesis G Richardson
On 6-28-21 at approx. 2:28 pm I, Cpl. G. Richardson was picking up chow trays in Max 7 when I arrived at cell 9 which houses inmate K. McKinney # [REDACTED] observed him standing in his cell pulling his pants down and putting his finger to his lips telling me to be quiet while he lifted up his shirt to show me his exposed erect penis while staring directly at me. I, Cpl. Richardson, gave this inmate several direct orders to stop but to no avail. This inmate knows that his actions are against ADC and UNIT Policy. Therefore I, Cpl. Richardson, am charging inmate K. McKinney # [REDACTED] with the following rule violations 10-3 and 12-3. Pending DCR, EOS

Date: 06/28/21 --- Time: 05:04:59 PM --- User: C. Sanders (SANCH05)

(I affirm that the information in this report is true to the best of my knowledge)

Signature of Charging Officer

NOTIFICATION:

Officer

[Signature]

6/30/21

Date & Time Notified

[Signature]

Witness Statements:

No ☒

If yes, list:

Inmate's Signature

C.S.O. Review: Outcome: Refer to Hearing Officer/Comm.

By: Randle, Kenyon V

Date 06/30/2021

Extension:

No

☒

Yes

☐

Has extension form been completed?

☐

Presentation by Counsel - Substitute is required when it is determined that the inmate is illiterate or incompetent or that the issues are extraordinarily complex.

Counsel-Substitute: Assigned (Name)

Not Assigned

Ex #1

STATE OF ARKANSAS)

COUNTY OF Lee) §**AFFIDAVIT**

I Isaac Samuelson ADC [REDACTED] after first being sworn, do hereby swear, depose and State that: On 6-28-21 Mrs. Richardson approached my cell (7-10) while I was taking a bath in my sink and she said out loud "why are you naked"? I told her to shut up I am washing in my sink. All I was doing was taking a bath and had no intentions of doing anything out of line to get into trouble. I am in the privacy of my cell.

Inmate McKinney had nothing to do with this incident and I am willing to own up and take my charge because I don't want somebody to get in trouble for something they had nothing to do with.

Mrs. Richardson has clearly made a mistake

I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge information and belief

6-30-2021
DATE

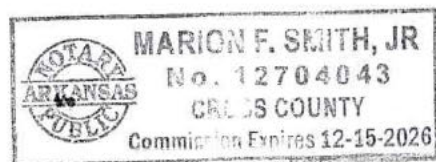
Isaac Samuelson
AFFIANT

[REDACTED]
SOCIAL SECURITY #

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 1 day of July, 2021.

[Signature]
NOTARY PUBLIC

My Commission Expires: 12-15-2026



EX#2

ISSR101

HC

Arkansas Department of Correction

DISCIPLINARY HEARING ACTION

Inmate: McKinney, Kwasi A

ADC#: [REDACTED]

Unit: [REDACTED]

Code Violation(s):

10-3 Indecent exposure; may result in a referral for criminal prosecution.

12-3 Failure to obey verbal and/or written order(s) of staff.

Date/Time of Alleged Offense(s): 06/28/2021 2:28 PM

Hearing Date: 07/02/2021

Time: Start 7:08 AM

End 7:16 AM

Recorder: Blake, Janice

Tape#:

Side:

Meter: From

To

Plea: Guilty, Guilty

Attendance Waived: No

Has waiver form been completed? _____

Inmate's Statement:

I do not know what went on he got me on the bold. I was asleep and did not even get a tray that day.

Signature of Inmate

Court Questions:

Do you have a statement?

Sentencing Conditions:

Verdict: Guilty, Guilty

Restriction Days to Serve

Commissary:	60	Days Suspended:	0
Phone:	60	Days Suspended:	0
Visitation:	60	Days Suspended:	0
Punitive Isolation Days to Serve:	30	Days Suspended:	0
GT Class Reduced to:	IV	Class Suspended:	
GT Days Forfeited:	157	Days Suspended:	0

Ex #3

Inmate: McKinney, Kwasi A

ADC#: [REDACTED]

Unit: [REDACTED]

Additional Sanctions/General Comments:

Factual Basis for Decision (This is a short synopsis of the facts as the Hearing Officer perceives them after reviewing all of the evidence.):

Inmate indecently exposed his penis to staff and disobeyed staff orders.

Evidence Relied Upon:

005 from staff supporting F-1 report.
F-1 statement from charging officer.

Reasons Why Information Purporting to Exonerate Inmate was Discounted:

Staff report is accepted.

Reasons for Assessment of Punishment:

Inmate is Class IC and must learn that such behavior will not be tolerated.

I have read this report and understand that I may appeal to the Warden about any decision made in this matter within fifteen (15) working days by completing the "Disciplinary Appeal" form.

Inmate's Signature _____

Counsel-Substitute _____

I affirm that the information is true to the best of my knowledge.

Hearing Officer _____

Date _____

Janice Blake

Ex # 4



JUL 23 2021

MAJOR DISCIPLINARY APPEAL RESPONSE



INMATE NAME: Kwasi McKinney ADC: [REDACTED] BK: Iso-26

Disciplinary Date: 06/28/2021

By Charging Officer: Cpl. Richardson

WARDEN/CENTER SUPERVISOR'S DECISION

You were written a major disciplinary on 06/28/2021 at approx. 2:28 p.m. by Cpl. Richardson and it has been reviewed. Due to further investigations of this incident, your appeal is being reversed and the Disciplinary Hearing Officer's decision will not be upheld, and all sanctions are to be dismissed. End of statement.

If you disagree with my decision you may appeal to the Hearing Administrator, at Central Office, within 15 days.

A. J. [Signature]
Signature of Warden/Designee

Deputy Warden
Title

7-26-21
Date

Ex#5

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

April 14, 2022

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

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 221100

Dear Mr. Burns,

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

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

Sincerely,

Kathryn Irby

ES: cmedaniel

cc: Kwasi McKinney (ADC [REDACTED]), *Claimant* (w/ encl.)

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

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY ([REDACTED])

CLAIMANT

v.

CLAIM NO. 221100

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

ANSWER TO COMPLAINT

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

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

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

a. Agency number: 0480

b. Cost Center: HCA 0100

c. Internal Order: 340301

d. Fund Center: 509

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

Respectfully submitted,



Thomas Burns (02006)
ADC Legal Division
6814 Princeton Pike
Pine Bluff, AR 71602-9411
(870) 267-6845 telephone
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 15th day of April 2022 on the Claimant by placing a copy of the same in the U. S. Mail, regular postage, to:

Kwasi McKinney ([REDACTED])

[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 221100

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS
and RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Comes Now the Respondent, Arkansas Department of Corrections (ADC), for its Motion to Dismiss with response to motion for summary judgment, states:

1. The inmate's claim should be dismissed pursuant to the Arkansas Rules of Civil Procedure (ARCP) 12(b)(6) as it fails to state facts upon which relief can be granted.
2. On a motion to dismiss pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v Morgan*, 2011 Ark. 94. "However, [Arkansas's] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.*
3. An "important mechanism for weeding out meritless claims [is a] motion to dismiss for failure to state a claim." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v American State bank*, 339 F.3d 764 (8th Cir. 2003). A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcraft v Iqbal* 556 U.S. 662 (2009). Although detailed factual allegations are not required, more than "unadorned, the-defendant-unlawfully-harmed-me-

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

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

5. The inmate seeks the sum of \$2700.00, for alleged Disciplinary Court Appeal for exposing himself to an Officer. Although inmate seeks an award of damages (\$2700.00), he fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company, 362 Ark. 317, 208 S.W. 3d 153 (2008)*. The inmate’s claim, even if true, does not support a claim for monetary relief.

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

7. Pro Se parties are not given special treatment and are held to the same standard as a licensed attorney. *Pressler v. Ark. Publ. Serv. Comm’n, 2011 Ark. App. 512, at 9, 385 S.W.3d*

349, 355 (citing *Elder v. Mark Ford & Assocs.*, 103 Ark. App. 302, 288 S.W.3d 702 (2008)). The Claims Commission notes that under Arkansas law, a claimant choosing to represent himself is held to the same standard as an attorney. *Michael Pickens v ADC claim 190793* (ASCC 2019).

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

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

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

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

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

12. The inmate is currently housed at the [REDACTED] He is serving a 154-year sentence on a conviction of Simultaneous Possession of Drugs and Firearms and other crimes.

13. This inmate claims he was wrongly convicted by the ADC’s disciplinary court.

14. The inmate states that his conviction was overturned by the Warden.

15. The inmate is appealing his disciplinary conviction and punitive time.

16. The inmate state in his complaint that he was moved to different barracks.

17. The Claims Commission was not designed to be the appellate arm of the ADC’s disciplinary court.

18. This is simply not the function of the Claims Commission and as such the Commission does not have jurisdiction over the ADC disciplinary process.

19. The inmate has even attached his disciplinary action and appeal reversal by the Deputy Warden. That ends his process and affords him due process.

20. The inmate did not grieve anything about other issues he raises in his complaint.

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

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

22. “A basic rule of administrative procedure requires that an agency be given the opportunity to address a question before a complainant resorts to the courts. Where a party has failed to exhaust his or her administrative remedies, the trial court lacks jurisdiction over the suit” *Ark. HHS v Smith*, 370 Ark. 490. One must exhaust their administrative remedies before they may proceed in Court. *See Johnson v Johnson*, 385 F.3d 503 (2004).

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

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

25. “The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015). “Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.” Ark. Code Ann. § 19-10-

204(3)(B) (West Supp. 2015). The claimant has not been damaged and only makes mere assertions that he has been damages. Without damages a Court would dismiss the claim in its entirety.

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

ADC RESPONSE TO MOTION FOR SUMMARY JUDGMENT

1. The ADC denies each and every allegation contained in the inmates motion unless specifically admitted herein.
2. The ADC admits that the inmate seeks compensation for a disciplinary, deny the remainder of paragraph 1.
3. The ADC denies paragraph 2.
4. The ADC denies paragraph 3.
5. The ADC admits paragraph 5, but denies that summary judgment is appropriate for the inmate.

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

Respectfully submitted,




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

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 1st day of July 2022, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]


Thomas Burns

JUL 06 2022

RECEIVED

Kwasi McKinney # [REDACTED]
[REDACTED]

Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201-3823

RE: McKinney # [REDACTED] Vs. Arkansas Division of Correction ~~NO~~ NO: 22100

1. Claimants Motion for Summary Judgment
2. Brief in Support of Motion for Summary Judgment

Dear Sir:

Please find enclosed the Claimants Motion for Summary
~~Judgment~~ Judgment, and Claimants Brief in Support of Motion
for Summary Judgment for filing in the above
reference claim.

Please notify me of any action taken by the
Commission.

Coordially
[Signature]

cc: file

Enclosed (2)

JUL 06 2022

Before The Arkansas State Claims Commission

RECEIVED

Kwasi McKinney

Claimant

V

NO: 221100

Arkansas Division of Corrections

Respondent

Claimant's Motion for Summary Judgement

Comes Now, Kwasi McKinney (the "Claimant") here in after, pro-se, and through this his Motion for Summary Judgement, states as follows:

1. Claimant did on March 23, 2022 filed this instant claim in the Arkansas State Claims Commission seeking monetary compensation for a disciplinary that was reversed after he spent 27 days in isolation on punitive/restriction.

2. Claimant seeks summary judgement as to the liability of respondent for damages to the plaintiff of defamation of character, loss of visitation, phone, commissary privileges and suffering from heat in isolation.

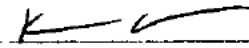
3. The reasons therefore are set forth in the Claimants declaration and brief in support of this motion.


4. Pursuant to Federal Rules of Civil Procedure Rule 56,

claimant seek summary judgement.

Wherefore, Kwasi McKinney prays this Commission grant his Motion for Summary Judgement and any other relief this Commission deems appropriate and just.

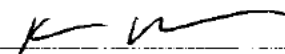
Respectfully Submitted




Kwasi McKinney # 



I, Kwasi McKinney do hereby swear that on this 29th day of June 2021 I have served on Respondent through Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff, AR 71620 by serving a copy of my Motion for Summary Judgement, and a Copy of my Brief in Support of Motion for Summary Judgement ~~attached~~ by placing same in the Usi Mail with sufficient postage affixed to ensure delivery.



Kwasi McKinney # 

JUL 06 2022

Before The Arkansas State Claims Commission

RECEIVED

Kwasi McKinney

Claimant

V

No: 221100

Arkansas Division of Correction

Respondent

Claimant's Brief in Support of Motion for Summary Judgement

I

Statement of Case

This is a small claims complaint filed March 23, 2022 in the Arkansas State Claims Commission seeking monetary compensation against respondent for a disciplinary that was reversed. The disciplinary resulted in claimant being placed in isolation for 27 days, loss of visitation, phone, commissary privileges and defamation of character.

II

Statement of ~~the~~ Facts

Respondent mistakenly wrote claimant a disciplinary for exposing his penis to her. The disciplinary notification officer Sgt. Davis failed to get claimants witness statement and sworn affidavit that was written by inmate Isaac Samuelson [REDACTED] stating that the respondent intentions was to write him up and he is willing to accept his own punishment.

III

Statement of Facts

Claimant went to disciplinary court and was found guilty for indecent exposure and failure to obey a verbal order by officer.

Claimant was placed on 30 day punitive, 157 days good time taken away and 60 days visitation, phone, and commissary restriction. After spending 27 days in isolation the claimants disciplinary was reversed.

Argument

The 27 days claimant spent in isolation he was not able to go to commissary or able to contact his family through visitation or phone. Claimant also felt dehumanize because of the restrictions. Claimant had ~~to~~ spend 27 days in isolation where it is no AC or fans and suffered from the heat. Claimant also was embarrassed because the indecent exposure charge go on the internet under sexual activities and the whole world can see it. Claimant is asking to be compensated a \$100 for every day that he spent in isolation.


Claimant maintains that a jury could ~~reason~~ reasonably find in favor of claimant based on all the facts presented in claimants Brief in Support and Summary Judgement and therefore this Arkansas State Claim Commission should

grant claimants Motion for Summary Judgement, Anderson
v. ~~Dee~~ Liberty Lobby, Inc., 477 US 242, 248, 106 S.Ct.
2505 (1986).

Wherefore, Kwasi McKinney asserts for the foregoing reasons,
his Motion for Summary Judgement should be granted and
claimant awarded \$2,700 and any other relief this Commission
deems appropriate and just.


Respectfully Submitted



Kwasi McKinney# 

I Kwasi McKinney do hereby swear that on this 27th day
of June 2022 I have served on Respondent through
Attorney Burns, at 6418 Princeton Pike, Pine Bluff, AR, 71602
a true copy of my motion for Summary Judgement and
Brief in support of Motion for Summary Judgement by
placing same in the U.S. Mail with sufficient postage
affixed to ensure delivery.



Kwasi McKinney# 

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

V.

NO. 221100

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ADC RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Respondent, Arkansas Department of Correction (ADC), for its reply, states:

1. The ADC denies each and every allegation contained in the Inmate's motion unless specifically admitted herein.
2. The ADC admits paragraph 1. The inmates claim is related to the ADC Disciplinary Court and the matter is so entwined in the disciplinary action that it must be dismissed.
3. The ADC denies paragraph 2. Arkansas does not recognize a cause of action for "excessive confinement" *Harmon v Jackson et al*, 2018 Ark. 196 (2018).
4. The ADC denies paragraph 3.
5. The ADC denies paragraph 4. This is a State matter not a Federal matter.
6. The ADC and should be granted summary judgment as the inmates claims are related to the ADC Disciplinary Court and action as he states in paragraph 1.
7. The Claims Commission is not designed to be the Appellate arm of the disciplinary process and therefore does not have jurisdiction to hear the matter.
8. The ADC denies paragraph 6.
9. The Inmate is held to the same standard as an attorney if he elects to proceed Pro Se. He should know the difference between the rules of civil procedure and criminal procedure.

WHEREFORE, Respondent prays that the Motion be denied; for their attorney's fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,

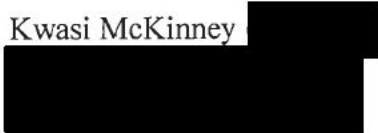


Thomas Burns (02006)
Division of Correction
Legal Department
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 13th day of July 2022, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney



Thomas Burns

JUL 25 2022

RECEIVED

Before The Arkansas State Claims Commission

Kwasi McKinney

Claimant

v.

NO: 221100

Arkansas Division of Correction

Respondent

claimants' Response to
Respondents Motion to Dismiss

Comes Now, Kwasi McKinney the ("Claimant") here in after, prose, and through this his Response to Respondent motion to Dismiss, states as follows:

1. Claimant has moved this Commission for Summary Judgement pursuant to Fed. R. Civ. P. Rule 56
2. Claimant filed his Motion for Summary Judgement, and Brief in support of Motion for Summary Judgement.
3. Claimant was wrongly found guilty by the ADC's disciplinary court.
4. Claimant spent 27 days in isolation on punitive/restriction.
5. This commission does have jurisdiction over the ADC disciplinary process if an ADC rule was violated.

6. Claimant disciplinary was reversed by the warden after he spent 27 days in isolation on punitive restriction.
7. Claimant asserts that inmate disciplinary matters are none grievable.
8. Claimant administrative remedies was exhausted through the disciplinary appeal process.
9. Based upon the ~~complaint~~ law, this Commission must grant claimant's Motion for Summary Judgement.
10. Based upon the complaint and facts, Claimant is entitled to Summary Judgement and the full award of all damages sought.

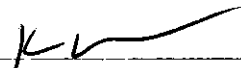
Wherefore, Kwasi McKinney prays this Commission deny the Respondents Motion to dismiss, grant Claimant Summary Judgement and award all damages sought by Claimant and other relief this Commission deems appropriate and just.

Respectfully Submitted

12
Kwasi McKinney # [REDACTED]

Certificate of Service

I, Kwasi McKinney do hereby certify that on this 22nd day of July 2022 I have served on Respondent through its attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff AR 71602 by placing this Claimant's Response to Respondent's Motion to Dismiss in the U.S. Mail with sufficient postage affixed to ensure delivery.


Kwasi McKinney

NOV 08 2022

RECEIVED

In The Arkansas State Claim Commission

Kwasi McKinney

Claimant

v.

No. 200909

Arkansas Division of Correction

Respondent

Dear ASCC,

10-6-22

I have a hearing set for October 13, 2022 on the above-styled claim. This claim has been rescheduled three times. I have notes and evidence that I intend to bring with me to the hearing but all of my legal material was confiscated by Sgt. White/Jenkins and stored in the property room. Sgt. White/Jenkins is one of the officers that is involved in this claim. Sgt. White/Jenkins is trying to hinder me from prevailing in my claim by taken away my legal material.

Wherefore, I Kwasi McKinney ask this Commission to order Sgt. White/Jenkins to give me my legal material that pertains to this claim, and any other relief may be deemed proper and just.

Kwasi McKinney # [REDACTED]
[REDACTED]

Dear ASCC,

10-6-22

Could you please give me an update on my
claim: Kwasi McKinney v. Arkansas Division of Correction
No. 221100. Thank you very much.

Kwasi McKinney # [REDACTED]
[REDACTED]

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

November 9, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 221100

Dear Mr. McKinney,

On November 8, 2022, our office received correspondence from you dated October 6, 2022, in which you inquire about the status of your claim. Respondent's motion to dismiss and your motion for summary judgment are pending. The Claims Commission will consider these motions as quickly as practicable.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: mtucker

cc: Mr. Thomas Burns, Counsel for Respondent (via email)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC# [REDACTED])

CLAIMANT

v.

NO. 221100

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

MOTION FOR SANCTIONS

Comes now the Respondent, Division of Correction (ADC), by and through their attorney, Thomas Burns, and for their Motion, states:

1. On or about November 9, 2022 the Commission sent a letter to the Inmate and copied to the ADC. *See attached Ex A.*

2. In the letter it references that the inmate sent a letter to the Commission on October 6, 2022 requesting status. *Id.*

3. This is the first time the ADC has been made aware that the inmate contacted the Commission on October 6 2022.

4. The inmate is unduly prejudicing the ADC by engaging in ex-parte communications.

5. Due to the failure of the Inmate to follow the proper rules of civil procedure (ARCP) the ADC is being prejudiced by not being allowed to respond and refute the Inmates averments and documents.

6. The ADC would request that the Commission strike the Inmates claim and dismiss the matter for failure to follow the ARCP. The Inmate is deliberately misleading the Commission and made it so the ADC could not respond to get his desired result.

7. Rule 11 provides that the Court can impose sanctions if the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass,

cause unnecessary delay, or needlessly increase the cost of litigation; which we clearly have here.

WHEREFORE, the ADC prays for sanctions against Kwasi McKinney; for his complaint to be dismissed; for attorney's fees and costs; and for all other just and proper relief to which he may be entitled.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 15th day of November 2022 on the Claimant by placing a copy of the same in the U. S. Mail, regular postage, to:

Kwasi McKinney (ADC# [REDACTED])
[REDACTED]



Thomas Burns

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

November 9, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]

RE: *Kwasi McKinney v. Arkansas Division of Correction*
Claim No. 221100

Dear Mr. McKinney,

On November 8, 2022, our office received correspondence from you dated October 6, 2022, in which you inquire about the status of your claim. Respondent's motion to dismiss and your motion for summary judgment are pending. The Claims Commission will consider these motions as quickly as practicable.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: mtucker

cc: Mr. Thomas Burns, Counsel for Respondent (via email)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 221100

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by the Arkansas Division of Correction (the “Respondent”) to dismiss the claim of Kwasi McKinney (the “Claimant”). Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 23, 2022, seeking \$2,700.00 in damages. Claimant alleges that Respondent’s employee’s false accusation resulted in a disciplinary and his placement in punitive isolation. He further alleges that this disciplinary was reviewed and reversed after he spent 27 days in punitive isolation.

2. Respondent filed a motion to dismiss pursuant to Ark. R. Civ. Proc. 12(b)(6), arguing, *inter alia*, that the Claims Commission does not have jurisdiction over claims related to disciplinary matters.

3. Claimant then filed a motion for summary judgment.

4. Respondent responded to Claimant’s motion, arguing that summary judgment was not proper.

5. Claimant responded to the motion to dismiss, arguing that the Claims Commission does have jurisdiction over Respondent’s disciplinary process if a rule was violated.

6. Respondent then filed a motion for sanctions, arguing that Claimant sent a letter to the Claims Commission requesting the status of his claim and that this letter was an *ex parte* communication.

7. The Claims Commission agrees with Respondent that dismissal of this claim is proper. Because this claim is inexorably entwined with the disciplinary incident, it is beyond the scope and purpose of the Claims Commission to consider disciplinary issues or to insert itself into Respondent's disciplinary process.

8. If Claimant believes that he was deprived of due process or subjected to mistreatment in the disciplinary process, that claim can be brought in a court of general jurisdiction. *See* Ark. Code Ann. § 19-10-204.

9. As such, pursuant to Ark. Code Ann. § 19-10-204 and Ark. R. Civ. Proc. 12(b), the Claims Commission hereby GRANTS the Respondent's motion to dismiss, and Claimant's claim is DISMISSED.

10. Claimant's motion for summary judgment is DENIED.

11. Respondent's motion for sanctions is DENIED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: November 17, 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).

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

November 17, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

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

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 221100

Dear Mr. McKinney and Mr. Burns:

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

Sincerely,

Mika Tucker

ES: msscott

DEC 13 2022

Arkansas State Claims Commission

RECEIVED

Kwasi McKinney (a [REDACTED])

Claimant

v.

No. 221100

Arkansas Division of Correction

Respondent

Claimant's Appeal Brief

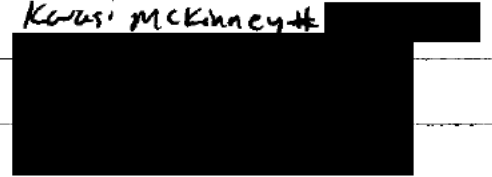
Comes Now the Claimant, Kwasi McKinney, and his Appeal Brief States:

1. ADC official violated its own policy by wrongly convicting claimant by ADC disciplinary court.
2. Claimant disciplinary was investigated and then overturned by Warden.
3. Claimant does not seek compensation for a disciplinary
4. Claimant was damage by spending 27 days in isolation on punitive restriction.

Wherefore, Claimant Kwasi McKinney, prays that his appeal be granted/ compensated \$2700; and all other just and proper relief to which he may be entitled.

Respectfully Submitted,


Korus McKinney



Certificate of Service

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

Thomas Burns

6814 Princeton Pike

Pine Bluff, AR 71602

From: [Mika Tucker](#)
To: [Desikan, Suba](#)
Cc: [Seaton, Gina](#)
Subject: APPEAL: McKinney v. ADC, Claim No. 221100
Date: Wednesday, December 14, 2022 12:22:00 PM
Attachments: [1--CRS memo.pdf](#)
[2--claim docs.pdf](#)
[3--ltr to agency.pdf](#)
[4--answer.pdf](#)
[5--MTD and response to MSJ.pdf](#)
[6--MSJ and BIS of MSJ.pdf](#)
[7--response to MSJ.pdf](#)
[8--response to MTD.pdf](#)
[9--corr from claimant.pdf](#)
[10--corr to claimant.pdf](#)
[11-motion for sanctions.pdf](#)
[12--order.pdf](#)
[13--corr trans order to parties.pdf](#)
[14--notice of appeal.pdf](#)

Hi, Suba.

Please confirm receipt of the attached claim file.

Thank you,
Mika

Mika Tucker
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2818

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN IRBY
DIRECTOR

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

MEMORANDUM

DATE: December 14, 2022

TO: Suba Desikan (via email)
Bureau of Legislative Research

FROM: Mika Tucker

RE: Claim referred to the Claims Review Subcommittee pursuant to Ark. Code
Ann. § 19-10-211

Kwasi McKinney v. Arkansas Division of Correction
Claim No. 221100

This memorandum is sent to transmit the above-referenced claim to the Claims Review Subcommittee pursuant to Ark. Code Ann. § 19-10-211.

cc: Mr. Kwasi McKinney (ADC [REDACTED]), Claimant (w/o encl.)
[REDACTED]

Mr. Thomas Burns, Counsel for Respondent (w/o encl.) (via email)
thomas.burns@arkansas.gov
leslie.browning@arkansas.gov.

Ms. Gina Seaton, Bureau of Legislative Research (w/ encl.) (via email)

From: [Mika Tucker](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Leslie Browning \(DOC\)](#)
Subject: APPEAL: McKinney v. ADC, Claim No. 221100
Date: Wednesday, December 14, 2022 12:27:00 PM
Attachments: [1--CRS memo.pdf](#)

Hi, Thomas.

Please see the memo attached.

Thank you,
Mika

Mika Tucker
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2818

From: [Desikan, Suba](#)
To: [Kathryn Irby](#); [Mika Tucker](#)
Subject: Pending Claims
Date: Monday, January 9, 2023 2:56:08 PM

Good Afternoon Kathryn & Mika,

I apologize for any delays in indicating that items you sent me were received. I have been unexpectedly out of the office for the past two weeks. I want to make sure that we have a complete list of all the claims that have been sent over, and that I have not inadvertently missed any emails. Please let me know if this list is complete:

Reissuance of Warrant/Unpaid Bill

1. #230301 American Air Liquide Holdings, Inc. v. Arkansas Department of Finance and Administration Corporate Income Tax Section

2. #230551 J.A. Riggs Tractor Co. v. University of Arkansas of Little Rock

3. #221210 Rocket Software, Inc. v. Arkansas Department of Finance and Administration Corporate Income Tax Section

Awarded Claims referred pursuant to Ark. Code Ann. § 19-10-215(b)

1. #200809 Debbie Brown, as Administratrix of the Estate of Chris Brown, and Joe Brown v. Arkansas Department of Transportation

Corrections Denied and Dismissed Claims - Appealed by Claimant

1. #221100 Kwasi McKinney v. Arkansas Division of Correction

Thank You,
Suba Desikan

Suba Desikan

Legislative Attorney | Administrative Rules Review Section
Bureau of Legislative Research

1 Capitol Mall, 5th Floor

desikans@blr.arkansas.gov

Office: 501-537-9185

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