

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 10 2025
By: TAMMY H. DOWNS, CLERK
DEP CLERK

Gregory Holt, ADC # 129616
a/k/a **Abdul Maalik Muhammad**

Plaintiff,

v.

DEXTER PAYNE, Director, Arkansas
Division of Correction, in his official capacity

Defendant.

Case No. 4:25-cv-699-LPR-JJV

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff Gregory Holt a/k/a Abdul Maalik Muhammad, for his motion for a preliminary injunction, states:

1. This is a motion for a preliminary injunction under Fed. R. Civ. P. 65.
2. Plaintiff seeks a preliminary injunction requiring Defendant Dexter Payne, Director, Arkansas Division of Correction ("ADC"), to immediately request and facilitate the transfer of Plaintiff back to the Larry B. Norris Unit in Arkansas from the U.S. Penitentiary, Hazelton in West Virginia.
3. Defendant's June 9, 2025, transfer of Plaintiff to a federal facility was an act of unconstitutional retaliation against Plaintiff's meritorious litigation against the ADC.
4. The transfer has caused and continues to cause immediate and irreparable harm. The transfer harms Mr. Muhammad by infringing on his First Amendment rights to pursue litigation. The transfer also threatens to foreclose Mr. Muhammad's access to courts, as Defendant seeks to moot Plaintiff's active civil rights lawsuits. Mr. Muhammad has also suffered and will

continue to suffer physical harm unless the status quo is restored and he is transferred back to the Larry B. Norris Unit in Arkansas.

5. For these reasons and as set forth more fully in the accompanying brief, Plaintiff respectfully requests that this Court grant this motion for a preliminary injunction and order Defendant to immediately request and facilitate Plaintiff's transfer back to the Larry B. Norris Unit in Arkansas.

6. Plaintiff further requests that the Court waive security for the preliminary injunction otherwise required by Fed. R. Civ. P. 65(c). *See, e.g., Turtle Island Foods SPC v. Soman*, 424 F. Supp. 3d 552, 579 (E.D. Ark. 2019) (waiving Rule 65(c) bond because "the State has not requested security in the event this Court grants a preliminary injunction nor is there evidence regarding whether, or in what amount, the State will be financially harmed if the Court grants a preliminary injunction").


7. This motion for a preliminary injunction is supported by the verified complaint (ECF No. 1) and the following exhibits.

P.I. Exhibit No.	Description	Date
A	Order, <i>Holt v. Payne</i> , No. 4:22-cv-01132-KGB (E.D. Ark. filed Nov. 21, 2022), ECF No. 133	March 10, 2025
B	Order, <i>Holt v. Payne</i> , No. 4:22-cv-01132-KGB (E.D. Ark. filed Nov. 21, 2022), ECF No. 148	May 8, 2025
C	Email from Carolyn M. Homer	May 8, 2025

D	Declaration of Dexter Payne in Opposition to Plaintiff's Motion for a Temporary Restraining Order, <i>Holt v. Payne</i> , No. 4:22-cv-01132-KGB (E.D.Ark. filed Nov. 21, 2022), ECF No. 152-2	June 6, 2025
E	Plaintiff's Inmate Profile with the ADC	July 2, 2025
F	Ark. Dep't of Corr. Directive No. 19-34 § 3(H) (Dec. 12, 2019)	December 12, 2019

Dated: July 10, 2025

Respectfully submitted,

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Attorneys for Plaintiff

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

GREGORY HOLT, ADC # 129616
also known as Abdul Maalik Muhammad

PLAINTIFF

v.

Case No. 4:22-cv-01132-KGB

LINDSAY WALLACE,¹ et al.

DEFENDANTS

ORDER

Before the Court is plaintiff Gregory Holt a/k/a Abdul Maalik Muhammad's² appeal of United States Magistrate Judge Joe J. Volpe's decision denying the return of 27 prisoners' legal property (Dkt. No. 103). Defendants Lindsey Wallace, in her official capacity as Secretary of the Arkansas Department of Corrections; Dexter Payne, in his official capacity as Director of the Arkansas Division of Correction ("ADC"); William Straughn, in his official capacity as Deputy Director of Institutions at the ADC; James Shipman, in his official capacity as Warden at the Tucker Maximum Security Unit ("MSU") of the ADC; Maurice Culclager, in his official capacity as Deputy Warden of the MSU; Joseph Mahoney, in his official capacity as Major and Chief of Security at the MSU; and Lieutenant Karma Thorns, in her official capacity as a lieutenant at the MSU (hereinafter collectively "Defendants") responded in opposition to Mr. Holt's appeal (Dkt. No. 109), and Mr. Holt replied in support of his appeal (Dkt. No. 112). Also before the Court and ripe for this Court's review are Judge Volpe's August 8, 2024, Partial Recommended Disposition

¹ The Clerk is directed to substitute Lindsay Wallace, the current Secretary of the Arkansas Department of Corrections in her official capacity, for Joe Profiri as the proper defendant in this matter pursuant to Federal Rule of Civil Procedure 25(d).

² The Court understands from the hearing on the motion for temporary restraining order in this matter that Mr. Holt prefers to be called Mr. Muhammad. However, because plaintiff is named as "Gregory Holt" on the docket and because the Court would like to maintain consistency in the record, the Court will continue to refer to plaintiff as Mr. Holt in the Court's Orders.

(hereinafter “the August 8 Recommendation”) recommending that Secretary Wallace be voluntarily dismissed without prejudice as a party to this lawsuit (Dkt. No. 114) as well as Judge Volpe’s August 30, 2024, Partial Recommended Disposition (hereinafter “the August 30 Recommendation”) recommending that Defendants’ motion to dismiss the second amended complaint (hereinafter the “operative complaint”), or alternatively motion for a more definite statement, be granted, in part, and denied, in part (Dkt. No. 116). Defendants and Mr. Holt filed objections to Judge Volpe’s August 30 Recommendation (Dkt. Nos. 118; 119). Mr. Holt also filed a response to Defendants’ objections (Dkt. No. 120). Finally, before the Court is intervenor Edgar Lee Guinther’s appeal of Judge Volpe’s Order denying his motion for order and to intervene (Dkt. No. 128).

For the following reasons, the Court denies Mr. Holt’s appeal of Judge Volpe’s decision denying the return of 27 prisoners’ legal property (Dkt. No. 103). The Court adopts, without objections, Judge Volpe’s August 8 Recommendation recommending that Secretary Wallace be dismissed from this lawsuit (Dkt. No. 114). The Court adopts, in part, and declines to adopt, in part, Judge Volpe’s August 30 Recommendation relating to Defendants’ motion to dismiss the operative complaint or for a more definite statement. The Court denies Mr. Guinther’s appeal of Judge Volpe’s Order denying his motion for order and motion to intervene.

I. Procedural Background

Mr. Holt, an inmate in the MSU of the ADC, filed an amended complaint in this case, as well as a motion for emergency preliminary injunction (Dkt. Nos. 3; 10). In the amended complaint, Mr. Holt stated that the ADC’s property policy as written, Administrative Directive 20-

08 (“the Policy”),³ which was approved and enforced by former ADC Secretary Solomon Graves and former Warden Jared Byers, was being interpreted at the time the amended complaint was filed to mean that inmates can only keep one bag of personal property, including legal materials, in their cells and that the rest of their property must be stored in storage (Dkt. No. 10, at 54-55). Mr. Holt stated in his amended complaint that, under the Policy, inmates may, in theory, request access to a stored property bag and swap it out with the property bag in their cell; he observes that property boxes were removed in 2018 and replaced “by property bags measuring 30 x 16 inches” (Dkt. No. 10, at 32-39). Mr. Holt complained that the process to request a stored property bag and swap it out with the property bag in the cell was slow, not “workable,” understaffed, under sourced, and prevented him from effectively representing himself and numerous prisoners seeking his assistance as a jailhouse lawyer (*Id.*). According to Mr. Holt, Defendants violated his constitutional rights to access the courts and to be a jailhouse lawyer, as well as his First Amendment rights of free speech and association (*Id.*, at 65-70). Additionally, Mr. Holt brought claims under Arkansas law (*Id.*, at 58-65). Mr. Holt sued Defendants in their official capacities only (*Id.*, at 2).

In a September 25, 2023, Order, the Court adopted in part the Recommended Disposition of Judge Volpe and dismissed without prejudice Mr. Holt’s claim that the Policy violated his right of access to the courts to bring claims on his own behalf (Dkt. No. 17, at 12). The Court declined to adopt Judge Volpe’s Recommended Disposition with respect to Mr. Holt’s claims that the Policy violated Mr. Holt’s constitutional rights to assist other prisoners in litigation and his First Amendment rights of free speech and association (*Id.*, at 13). The Court found that Mr. Holt could

³ MSU Policy 9.27.0, referenced by the parties in their briefing on the temporary restraining order, references AD 20-08 (Dkt. No. 35-13, at 9, Ex. A-12).

pursue his jailhouse lawyer and First Amendment rights of free speech and association claims (*Id.*). The Court also declined to dismiss Mr. Holt's state law claims (*Id.*). The Court referred the case back to Judge Volpe for further proceedings consistent with the terms of the Order and for a ruling on Mr. Holt's pending motion for emergency preliminary injunction and for expedited ruling (*Id.*). Mr. Holt filed his motion to re-urge application for preliminary injunction, which he moved to withdraw at the hearing on the motion for temporary restraining order, and the Court granted his motion to withdraw without objection from Defendants (Dkt. No. 21).

Counsel entered an appearance for Mr. Holt and filed an application for a temporary restraining order, or in the alternative, a preliminary injunction (Dkt. Nos. 28; 29). The motion sought an order "requiring the Arkansas Department of Correction [] to cease its ongoing review of legal paperwork including documents protected by the attorney-client privilege and attorney work product doctrine ('Legal Materials') seized from Plaintiff's cell by the ADC on November 16, 2023." (Dkt. No. 29, ¶ 2). Mr. Holt stated that his motion was "narrowly targeted to seek relief only as to Mr. Holt's privileged correspondence, Mr. Holt's work product, and the records of Mr. Holt's Legal Material related to his *active personal cases*." (Dkt. No. 46, at 2) (emphasis added). Following a hearing, the Court denied Mr. Holt's motion for a temporary restraining order (Dkt. No. 61).

Mr. Holt moved for leave to file the operative complaint (Dkt. No. 64). Defendants filed an opposition to Mr. Holt's motion for leave to file the operative complaint (Dkt. No. 65). In a text Order dated April 11, 2024, the Court granted Mr. Holt leave to file the operative complaint, which sets forth five counts (Dkt. No. 66). Defendants responded to the operative complaint by filing a motion to dismiss, or alternatively, a motion for more definite statement (Dkt. No. 84). Mr. Holt filed a response in opposition to the motion to dismiss the operative complaint, or

alternatively, motion for more definite statement (Dkt. No. 92). Judge Volpe filed his August 30 Recommendation granting, in part, and denying, in part, Defendants' motion to dismiss, or alternatively for a more definite statement (Dkt. No. 116). Both parties filed objections, and Mr. Holt responded to Defendants' objections (Dkt. Nos. 118-120).

In a text Order dated September 26, 2024, Judge Volpe denied a motion for order and motion to intervene filed by inmate Mr. Guinther (Dkt. No. 122). Mr. Guinther appeals Judge Volpe's Order (Dkt. No. 128). No party has responded to Mr. Guinther's appeal, and the time for doing so has passed.

The Court will discuss each of these matters in turn.

II. Appeal Of Judge Volpe's Order Denying Mr. Holt's Motion For Return Of Property

Before the Court is Mr. Holt's appeal of Judge Volpe's June 20, 2024, Order (Dkt. No. 99) denying Mr. Holt's motion for return of 27 prisoners' legal property (Dkt. No. 103). Mr. Holt specifically appeals the sentence in Judge Volpe's text Order where Judge Volpe determines that Mr. Holt "lacks standing to seek the return of other inmates' property." (Dkt. No. 99). Defendants respond in opposition to Mr. Holt's appeal and assert that Mr. Holt does not have standing to seek relief on behalf of other inmates (Dkt. No. 109). Mr. Holt filed a reply to Defendants' response (Dkt. No. 112). For the following reasons, the Court denies Mr. Holt's appeal of Judge Volpe's Order (Dkt. Nos. 103; 99).

A. Background Regarding The Return Of Property Of Other Inmates

Mr. Holt filed a motion requesting the return of what he calls "legal files" belonging to 27 prisoners who were named in a memorandum accompanying his motion, and he requested to be allowed to "organize the files prior to their return" in what he asserted was Defendants' "past practice." (Dkt. No. 88, at 1). Mr. Holt argues that the parties agreed to the return of these materials

when they stipulated to the return of legal material belonging to inmate Thomas E. Crockett and included a statement that the “same procedure may be applied to any other prisoners’ materials sorted by the ADC on November 17, 2023, without the need to seek an additional Court Order with respect to specific names” (Dkt. No. 62, ¶ 3). According to Mr. Holt, Defendants returned the files of eight other inmates before opting not to return other legal materials without a Court Order (Dkt. No. 89, at 4-5). Mr. Holt seeks the return of 27 prisoners’ legal property because he understands that it comports with the parties’ prior stipulation and with Defendants’ prior policy (*Id.*, at 6-7).

Defendants responded to Mr. Holt’s motion for return of 27 prisoners’ legal property and maintained that Mr. Holt lacks standing to seek relief on behalf of other inmates (Dkt. No. 93 (citing *Hodak v. City of St. Peters*, 535 F.3d 899, 904 (8th Cir. 2008); *Guinther v. Profiri*, Case No. 4:23-cv-00822-BRW-JTK, 2023 WL 6304951, at *4 (E.D. Ark. Sept. 8, 2023), *report and recommendation adopted*, Case No. 4:23-cv-00822-BRW, 2023 WL 6296978 (E.D. Ark. Sept. 27, 2023))). Defendants also argued that a party generally does not have standing to seek to quash a subpoena issued to a non-party, so it stands to reason that Mr. Holt does not have standing to seek an order compelling Defendants to return documents to non-party inmates (Dkt. No. 93, at 2). Defendants further argue that Mr. Holt’s motion lacks any citation to applicable law as required by Local Rule 7.2(a) of the Eastern and Western Districts of Arkansas. Defendants urge that inmates seeking a return of their property may file motions to intervene in the case and point out that two inmates have already successfully intervened to obtain the return of their documents (Dkt. No. 93, at 2).

In a text Order dated June 20, 2024, Judge Volpe denied Mr. Holt's motion for return of property because he agreed that Mr. Holt lacked standing to seek the return of other inmates' property (Dkt. No. 99).

Mr. Holt appeals that decision and specifically Judge Volpe's determination that he lacks standing to seek the return of other inmates' property.

B. Standard

A magistrate judge may rule on any non-dispositive pre-trial matter, except those proscribed by statute. *See* 28 U.S.C. § 636(b)(1)(A). Federal Rule of Civil Procedure 72(a) permits a party to submit objections to a magistrate judge's ruling on non-dispositive matters. *See* Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A). Under Local Rule 72.1(VII)(B) of the Eastern and Western Districts of Arkansas, "[a] party may appeal the Magistrate Judge's ruling by filing a motion within fourteen (14) days of the Magistrate Judge's decision unless a shorter period is set by the District Judge or Magistrate Judge." Local Rule 72.1(VII)(B). Such a motion "shall specifically state the rulings excepted to and the basis for the exceptions." *Id.* On appeal of a magistrate judge's order, a district judge "may reconsider any pretrial matter . . . where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). "A finding is clearly erroneous when 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Lisdahl v. Mayo Found.*, 633 F.3d 712, 717 (8th Cir. 2011) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)).

C. Analysis

Mr. Holt argues in support of his appeal that he has standing to seek the return of the records of other inmates. He argues that the Court in screening Mr. Holt's complaint determined that he

“has standing” to pursue a First Amendment associational jailhouse lawyer claim (Dkt. No. 17, at 5, 8-9). Further, Mr. Holt states that, in ruling on his motion for a temporary restraining order, the Court determined that “[b]ecause defendants continue to have access to the seized materials, including but not limited to Mr. Holt’s property which defendants deem related to other inmates’ and inactive cases, and because Mr. Holt continues to have property in his cell that defendants consider to be subject to seizure and sorting under the current MSU and ADC property policies, the Court determines that Mr. Holt’s motion for temporary restraining order or, in the alternative, preliminary injunction, is not moot.” (Dkt. No. 61, at 15). According to Mr. Holt, this gives him standing to seek copying and return of the seized materials (*Id.*).

Mr. Holt further argues that he has standing to request return of other inmates’ documents as a party to the Court’s prior discovery orders (Dkt. No. 104, at 3). Here, Mr. Holt is referring to the Court’s reference in its Order denying the temporary restraining order, to a “litigation hold,” which Mr. Holt argues includes the other prisoners’ legal files that were seized from his cell. Mr. Holt also contends that he negotiated a Stipulated Order specifying the procedure for copying the legal files preserved for his discovery and returning the original files to third-party prisoners (*Id.*, at 3-4). Mr. Holt maintains that his original motion was based on enforcement of and best efforts to comply with the Court’s temporary restraining Order and now seems to contend that the only way that third party inmates may seek return of legal property is pursuant to the process set forth in the Stipulated Order (*Id.*, at 4).

Mr. Holt contends in his appeal that he seeks to hold Defendants to the multiple Court Orders already in place and their prior commitments (*Id.*, at 5). Mr. Holt also argues that he has standing as a bailee of the other inmates’ legal files with a possessory interest in the seized files

(*Id.*, at 5-8). Finally, Mr. Holt argues that he has standing to separate out his own legal files from those being returned to other inmates (Dkt. No. 104, at 8-12).

Defendants respond that Judge Volpe’s decision to deny the motion is not clearly erroneous or contrary to law and should be affirmed (Dkt. No. 109). Defendants contend that Mr. Holt lacks standing to seek relief on behalf of others (*Id.*, at 1 (citing *Guinther v. Profiri*, Case No. 4:23-cv-00822-BRW-JTK, 2023 WL 6304951 (E.D. Ark. Sept. 8, 2023), *report and recommendation adopted*, Case No. 4:23-cv-00822-BRW, 2023 WL 6296978)).

Defendants emphasize that the property at issue that was removed from Mr. Holt’s cell is contraband under MSU and ADC rules and policy (Dkt. No. 109, at 2-4). The Inmate Control Policy defines contraband as, “[a]ny article not authorized or issued to an inmate as personal or state property or purchased by the inmate through the Unit Commissary.” (Dkt. No. 109, at 2). The definition of “nuisance contraband” includes “[i]tems accumulated for the purpose of barter or trade.” (*Id.*). “Other Types of Contraband” include “articles in excess of established Unit/Center limits, articles used for unauthorized purposes, and/or articles in an inmate’s possession while in an unauthorized area” (*Id.*). Under the Inmate Property Control Policy, “if, after periodic inspections and shakedowns, the Warden or his designee determines that an excessive amount of personal property has been accumulated by an inmate, the inmate will be advised that he must dispose of the excessive property according to the policy set forth herein.” (*Id.*).

The Inmate Property Control Policy further describes the limits of “Legal Materials” an inmate may possess as follows:

1. An inmate may retain such legal materials as are necessary for pursuing litigation and preparation of appeals provided the quantity of those materials can be stored in the property box provided.
2. Articles not related to active litigation or appeals may be stored for a maximum of forty five (45) days. The inmate is responsible for the disposal

of those materials through visitation or the U.S. Mail at the inmate's expense.

3. Inmates may access stored legal materials by utilizing the inmate request system.
4. At the time of transfer the UPCO [Unit Property Control Officer] shall inquire of the inmate being transferred whether that inmate has legal work belonging to any other inmate. If so, those legal materials must be returned to that inmate.

(Dkt. No. 35-13, Subsection F).

Section H of the Inmate Control Policy states, “all personal property must be kept inside the Property Box that is issued to the inmate. The only exception will be shoes/shower shoes. Every means will be utilized to reduce storage of items as much as possible. Excessive amounts of property will be taken as contraband per AR 401.” (Dkt. No. 35-13). Administrative Directive 20-08 provides that inmates are not allowed to store any other inmate’s personal property (Dkt. No. 35-1).

Defendants contend that Mr. Holt’s true motive is evidenced by the affidavit of Heath Stocks, attached to their response (Dkt. No. 109, at 4). Defendants state that Mr. Stocks brought them an affidavit stating that Mr. Holt required payment in the form of commissary items for his legal assistance and that, when he asked Mr. Holt multiple times for his case file, Mr. Holt refused to return it to him, so it was confiscated as contraband (Dkt. Nos. 109, at 4; 109-3, at 1-3). Defendants maintain that Mr. Holt wants control over the other prisoners’ legal property so that he can continue to charge the inmates for his assistance (Dkt. No. 109, at 5).

Mr. Holt responds to these allegations in a declaration where he contends that he asked for commissary during Ramadan when he was hungry and that he has taken steps to assist Mr. Stocks with finding the habeas petition that he drafted, which without him would not exist (Dkt. No. 112-2).

In *Hodak v. City of St. Peters*, 535 F.3d 899, 904 (8th Cir. 2008), the Eighth Circuit Court of Appeals determined that third-party standing is an exception to the general rule that a plaintiff may only assert his own injury in fact and permits a litigant who lacks a legal claim to assert the rights of a third party. The Court was urged to analyze whether there were practical barriers that hindered the third party from asserting his or her own interest such as a “small financial stake involved and the economic burdens of litigation.” *Id.* (citing *Powers v. Ohio*, 499 U.S. 400, 414–15 (1991)).

Here, applying the test set forth in *Hodak*, it does not appear to the Court that there are any hinderances to the non-party inmates asserting their interests in obtaining their legal material by intervening in the case. In this case, at least two non-party inmates have successfully intervened to obtain their legal materials (Dkt. Nos. 81; 86; 97; 102).

The Court’s institution of a “litigation hold” in this case and the parties’ stipulated Order did not confer on Mr. Holt standing to compel the return of other inmates’ property. Other inmates may seek the return of their own property by intervening in the case as Mr. Stewart and Mr. Guinther did in order to obtain their property.

The Court determines that ADC and MSU policies prevent Mr. Holt from storing another inmate’s property and prevent Mr. Holt from contracting to provide legal services to other inmates. *See* Administrative Directive 20-08. Accordingly, the documents in Mr. Holt’s possession were considered contraband under ADC and MSU policies, and Mr. Holt’s possession of the documents was against the rules.

Any interest that Mr. Holt may have in the property of the 27 prisoners from the litigation hold perspective will continue to be protected because Defendants are obligated to the Court to abide by the litigation hold.

After review of Judge Volpe's Order, and the briefing of the parties, the Court finds that Judge Volpe's order was not clearly erroneous or contrary to law. *Lisdahl v. Mayo Found.*, 633 F.3d 712, 717 (8th Cir. 2011) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)). Accordingly, the Court denies Mr. Holt's appeal of Judge Volpe's June 20, 2024, Order denying his motion for return of 27 prisoners' legal property (Dkt. No. 103).

III. August 8 Recommendation Dismissing Defendant Joe Profiri

Also before the Court is the August 8 Recommendation recommending that Secretary of the ADC Joe Profiri, now named in this lawsuit as Lindsay Wallace, be voluntarily dismissed without prejudice because Secretary Wallace was not named as a defendant in Mr. Holt's operative complaint (Dkt. No. 114, at 1). No party has objected to the August 8 Recommendation, and the time for filing objections has passed. Accordingly, after careful consideration, the Court concludes that the August 8 Recommendation should be, and hereby is, approved and adopted in its entirety as this Court's findings in all respects (*Id.*). The Court voluntarily dismisses without prejudice defendant Lindsay Wallace as a defendant in this matter.

IV. August 30 Recommendation On Defendants' Motion To Dismiss Operative Complaint

A. Background

In November 2022, Mr. Holt initiated this action by filing a *pro se* complaint. In February 2023, Mr. Holt filed a *pro se* amended complaint (Dkt. No. 10). During screening mandated by 28 U.S.C. § 1915A, the Court concluded that Mr. Holt's amended complaint stated plausible claims that Defendants violated his right to freedom of speech, his right to freedom of association, his right to provide legal assistance to other prisoners, and several state law claims (Dkt. No. 17). The Court dismissed Mr. Holt's access to the courts claim because there were no facts suggesting that he had suffered an actual injury (*Id.*).

In April 2024, with the assistance of counsel, Mr. Holt sought leave to file the operative complaint to raise claims related to Defendants' seizure of documents from his cell in August and November 2023 (Dkt. No. 64; 68). Mr. Holt asserts in the operative complaint that Defendants have limited his access to the seized documents, lost or destroyed documents, and by doing so impeded his ability to litigate his pending lawsuits as well as to help other inmates with theirs (Dkt. No. 68). Mr. Holt also asserts Defendants have retaliated against him for filing this lawsuit and have prevented him from meeting with other prisoners to assist them with their cases (*Id.*).

Defendants filed an opposition to Mr. Holt's motion for leave to file the operative complaint (Dkt. No. 65). The Court granted Mr. Holt leave to file the operative complaint, which sets forth five counts (Dkt. No. 66). Mr. Holt alleges violation of his constitutional rights of access to the courts, to have confidential communications with counsel, to engage in free speech, to associate freely with other prisoners, to have due process of law, to be free from retaliation, and to provide legal assistance to other inmates (Dkt. No. 68). Additionally, he brings a claim for a violation of Religious Land Use and Institutionalized Person Act ("RLUIPA") (*Id.*). Mr. Holt did not renew any of his state law claims (*Id.*).

Defendants responded to the operative complaint by filing a motion to dismiss, or alternatively, a motion for more definite statement (Dkt. No. 84). In the motion, Defendants argue that the operative complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) (*Id.*, ¶ 2). Defendants contend that all claims based on events that occurred after November 1, 2022, must be dismissed under the Prison Litigation Reform Act ("PLRA") (*Id.*, ¶ 3). Alternatively, Defendants request that Mr. Holt be required to file a more definite statement in the operative complaint as to which Defendants are alleged to have violated Mr. Holt's rights and when the alleged violations occurred (Dkt. Nos. 84, ¶ 3; 85, at 27).

Mr. Holt filed a response in opposition to the motion to dismiss the operative complaint, or alternatively, motion for more definite statement (Dkt. No. 92). In his response, Mr. Holt maintains that the operative complaint satisfied both Federal Rule of Civil Procedure 15 and the exhaustion requirements of the PLRA when it asserted four new causes of action against five new Defendants based on new events and new grievances (Dkt. No. 92, at 8). Mr. Holt argues that all five counts in the operative complaint state a claim under Federal Rule of Civil Procedure 12(b)(6) (Dkt. No. 92, at 13-29).

Defendants did not file a reply to Mr. Holt's response.

On August 30, 2024, Judge Volpe filed his August 30 Recommendation granting, in part, and denying, in part, Defendants' motion to dismiss, or alternatively, for a more definite statement (Dkt. No. 116). Judge Volpe recommends that Defendants' motion to dismiss the operative complaint, or alternatively, motion for a more definite statement be granted only as to the request for dismissal of Mr. Holt's access to the courts and due process claims and that it be denied in all other respects (Dkt. No. 116, at 17).

Defendants filed objections to the August 30 Recommendation (Dkt. No. 118). In their objections, Defendants request that the Court dismiss all of Mr. Holt's claims arising after Mr. Holt filed his original complaint on November 21, 2022 (Dkt. No. 118). Mr. Holt filed a response to Defendants' objections to the August 30 Recommendation "to clarify the fundamental error in Defendants' objection, which is Defendants' failure to differentiate between supplemental and amended claims under Rule 15." (Dkt. No. 120).

Mr. Holt also filed objections to section II-B of Judge Volpe's August 30 Recommendation (Dkt. No. 119). Section II-B of Judge Volpe's August 30 Recommendation addressed Mr. Holt's First and Fourteenth Amendment access to the court and due process claims. Mr. Holt argues that

the August 30 Recommendation overlooks factual allegations that constitute actual injury under the Court's narrow definition (*Id.*, at 7-10). Further, Mr. Holt argues for a more expansive definition of "actual injury" (*Id.*, at 10-16).

B. Standard

To survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "A claim has facial plausibility when the plaintiff [has pleaded] 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 Court makes "this determination by considering only the materials that are necessarily embraced by the pleadings and exhibits attached to the complaint. *Carlsen v. GameStop, Inc.*, 833 F.3d 903, 910–11 (8th Cir. 2016). When ruling on a Rule 12(b)(6) motion to dismiss, the Court accepts the alleged factual allegations as true and makes all reasonable inferences that can be drawn in the plaintiffs' favor. *Gallagher v. City of Clayton*, 699 F.3d 1013, 1016 (8th Cir. 2012). Accordingly, a well-pleaded complaint will survive a motion to dismiss even if it appears recovery is very remote and unlikely. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554–56 (2007).

C. Analysis

1. Defendants' Objections

In their objections, Defendants request that the Court dismiss all of Mr. Holt's claims arising after Mr. Holt filed his original complaint on November 21, 2022 (Dkt. No. 118). Essentially, Defendants assert that Mr. Holt's claims must be dismissed because he did not exhaust his administrative remedies for those claims before filing his lawsuit, which Defendants assert is a requirement of the PLRA.

The PLRA provides that “[n]o action shall be brought with respect to prison conditions under section 1983. . . until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997(e)(a). “A civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P. 3.

Rule 15 permits a plaintiff to seek leave to amend both to clarify an original pleading and to “serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). Rule 15(d) of the Federal Rules of Civil Procedure authorizes supplementation of a complaint based on later events. While an amended pleading under Rule 15(a) “is designed to include matters occurring before the filing of the bill but either overlooked or not known at the time,” a supplemental pleading under Rule 15(d) “is designed to cover matters subsequently occurring but pertaining to the original cause.” *United States v. Vorachek*, 563 F.2d 884, 886 (8th Cir. 1977). “The purpose of Rule 15(d) is to promote, as complete an adjudication as possible, of an existing dispute between the parties, which may have evolved since the action was initiated.” *Schneeweis v. Nw. Tech. Coll.*, Case No. CIV. 97-1742 (JRT/RLE), 1998 WL 420564, at *13 (D. Minn. June 1, 1998).

Here, in his motion to file the operative complaint Mr. Holt sought to supplement his amended complaint to bring matters that occurred after the amended complaint was filed under Rule 15(d), and he asserted that he had fully exhausted all available administrative remedies before seeking to file the operative complaint (Dkt. No. 64, at 2). The Court granted the motion, and Mr. Holt filed the operative complaint (Dkt. Nos. 66; 68).

The Court agrees with Judge Volpe and the Third, Sixth, and Ninth Circuits that § 1997e(a)’s exhaustion requirement does not supplant Federal Rule of Civil Procedure 15(d) which permits a complaint to be supplemented to add “any transaction, occurrence, or event that

happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). *See Garrett v. Wexford Health*, 938 F.3d 69, 87–91 (3rd Cir. 2019); *Mattox v. Edelman*, 851 F.3d 583, 591–92 (6th Cir. 2017); *Saddozai v. Davis*, 35 F.4th 705, 709 (9th Cir. 2022). Here, accepting the facts alleged by Mr. Holt in the operative complaint as true and making all reasonable inferences from those facts in Mr. Holt’s favor, the operative complaint is a supplemental pleading that covers matters subsequently occurring but pertaining to Mr. Holt’s original complaint, as envisioned by *United States v. Vorachek*, 563 F.2d 884, 886 (8th Cir. 1977), and Mr. Holt exhausted those claims prior to filing the operative complaint. It would have been impossible for Mr. Holt to exhaust the claims in the operative complaint, which are related to claims asserted by Mr. Holt in his original complaint, prior to filing the operative complaint because the new events had not actually occurred when he filed the original complaint. The United States Supreme Court suggested in *Ramirez v. Collier*, 595 U.S. 411, 423 (2022), that a prisoner satisfies the PLRA exhaustion requirements if he exhausts his administrative remedies before filing an amended complaint. Mr. Holt met this requirement here by asserting that he exhausted all of his available administrative remedies prior to filing the operative complaint.

The district court cases that Defendants rely on in their objections to support their position are inapposite because the cases did not involve claims that arose after the lawsuit was originally filed. *See Dunahue v. Payne*, Case No. 4:21-cv-00959-JM-JJV, 2022 WL 2961878, at *3 (E.D. Ark. July 5, 2022), *report and recommendation adopted*, Case No. 4:21-cv-00959-JM, 2022 WL 2959939 (E.D. Ark. July 26, 2022); *Mallory v. Bland*, Case No. 4:20-cv-00105-JM-BD, 2020 WL 3239993, at *1 (E.D. Ark. June 3, 2020), *report and recommendation adopted*, Case No. 4:20-cv-105-JM, 2020 WL 3184175 (E.D. Ark. June 15, 2020). Further, Defendants’ use of *Johnson v.*

Jones, 340 F.3d 624 (8th Cir. 2003), is not helpful because *Johnson* does not involve an amended complaint.

Under the circumstances of this case, the Court finds persuasive the decisions from the Third, Sixth, Seventh, and Ninth Circuit Courts of Appeal that have held prisoner complaints may be amended to include new claims exhausted after the commencement of the lawsuit. *See Garrett*, 938 F.3d at 87-91; *Mattox*, 851 F.3d at 591-92; *Saddozai*, 35 F.4th at 709. In response, Defendants point to other Courts of Appeal cases that they contend have held that “an amended complaint does not extend the exhaustion deadline.” (Dkt. No. 118, at 4). The Courts of Appeal cases cited by Defendants are distinguishable from this case because here Mr. Holt claims to have exhausted his available administrative remedies prior to filing the operative complaint, but in the cases cited by Defendants, exhaustion of available administrative remedies was never completed. For example, in *Medina-Claudio v. Rodriguez-Mateo*, 292 F.3d 31, 34 (1st Cir. 2002), and *May v. Segovia*, 929 F.3d 1223, 1229–35 (10th Cir. 2019), both cited by Defendants, the plaintiff/appellant never exhausted his administrative remedies at all, and in *Hardin v. Hunt*, Case No. 21-7195, 2023 WL 3969989, at *1–3 (4th Cir. June 13, 2023); *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012); and *Smith v. Terry*, 491 Fed. Appx. 81, 82–83 (11th Cir. 2012), the plaintiff/appellant attempted to exhaust grievances related to the events giving rise to the original lawsuit after filing and then attempted to amend the lawsuit to correct the problem of filing the lawsuit before exhaustion of administrative remedies had been completed. These facts are not analogous to the facts here, where Mr. Holt exhausted his available administrative remedies for his original claims and then exhausted his available administrative remedies prior to seeking to amend his complaint to add additional related claims.

For all these reasons, the Court overrules Defendants’ objections to Judge Volpe’s August 30 Recommendation to dismiss all of Mr. Holt’s claims arising after Mr. Holt filed his original complaint on November 21, 2022.

2. Mr. Holt’s Objections

Mr. Holt filed partial objections to section II-B of Judge Volpe’s August 30 Recommendation on Defendants’ motion to dismiss (Dkt. No. 119). Specifically, Mr. Holt objects to Judge Volpe’s recommended dismissal of what he calls his interference-with-due-process claim (Count II), as well as his recommended dismissal of the “freedom-of-petition” portion of his First Amendment claim (Dkt. No. 119, at 4).⁴ Mr. Holt contends that “these recommended dismissals overlook key factual allegations and apply an incorrect legal definition of ‘actual injury.’” (*Id.*). In this Order, the Court will refer to these two claims, pled by Mr. Holt under both the First and Fourteenth Amendments, as Mr. Holt’s “access to the courts” claims.

The criteria for pleading a viable access to the courts claim is stringent. *Christopher v. Harbury*, 536 U.S. 403, 418 (2002)). To prove actual injury, Mr. Holt must “demonstrate that a nonfrivolous legal claim had been frustrated or was being impeded.” *Lewis v. Casey*, 518 U.S. 343, 353 (1996) (footnotes omitted). Actual injury means “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348. In *Christopher v. Harbury*, 536 U.S. 403, 415 (2002), the United States Supreme Court clarified, however, that a prisoner could bring a forward-looking access to the courts claim “to remove roadblocks to future litigation” and that such a “cause of action” must

⁴ In the August 30 Recommendation, Judge Volpe recommends that Mr. Holt be allowed to proceed with his claims that Defendants violated Mr. Holt’s constitutional rights by reading Mr. Holt’s confidential communications with counsel, which is different than his access to the courts claim. See *Wolff v. McDonnell*, 418 U.S. 539, 575–77 (1974).

“describe the official acts frustrating the litigation.” Mr. Holt contends that he is bringing a forward-looking access to the courts claim based on Defendants’ ongoing interference with his legal work (Dkt. No. 92, at 18).

Mr. Holt objects that, in recommending dismissal of his access to the courts claim, the August 30 Recommendation fails to view the allegations in the operative complaint in the light most favorable to Mr. Holt (Dkt. No. 119, at 8). The August 30 Recommendation acknowledges that the Eighth Circuit has recognized that “the taking of legal papers will often (though perhaps not always) interfere with the inmate’s right to access the courts.” (Dkt. No. 119, at 8 (citing *Goff v. Nix*, 113 F.3d 887, 892 (8th Cir. 1997))). Mr. Holt also asserts that the August 30 Recommendation correctly acknowledges “that prison officials cannot obtain an ‘unfair advantage’ by reading a prisoner’s legal papers.” (Dkt. No. 119, at 8 (citing *Cody v. Weber*, 256 F.3d 764, 768 (8th Cir. 2001); *Waff v. S.D. Dep’t of Corr.*, Case No. 01-3501, 2002 WL 31641530 (8th Cir. Nov. 25, 2002))). Mr. Holt asserts, however, that the August 30 Recommendation errs by making the determination that “in these cases, the seized legal documents were either destroyed or not given back to the prisoners,” but, in contrast, in Mr. Holt’s case “the seized documents have either been returned to [Mr. Holt] or are in storage.” (Dkt. No. 116, at 11). Mr. Holt points out that the problem with Judge Volpe’s statement is that, in the operative complaint, he asserts that Defendants destroyed some of his files, including draft work product (Dkt. No. 68, ¶ 219), and he further maintains that Defendants’ storage options are inadequate and inaccessible (*Id.*, ¶¶ 174-79).

Mr. Holt also contends that it was error for Judge Volpe to remark that Mr. Holt “does not say any of the seized legal documents involved cases against the guards who allegedly read them. Nor has he provided any facts explaining how the guards scanning them somehow gave the

Defendants in those pending lawsuits a tactical advantage.” (Dkt. No. 119, at 9 (citing (Dkt. No. 116, at 12))). Mr. Holt asserts, however, that in the operative complaint he alleges that Deputy Warden Culclager, Major Mahoney, and Lieutenant Thorns, who are all Defendants in this lawsuit, worked together to seize and review legal documents from his cell to gather information in support of their bosses’ answer to the complaint, which was due the next day (Dkt. No. 68, ¶¶ 313-18). Mr. Holt also argues that the operative complaint alleges that Defendants seized legal case files from his cell in order to change the status quo and suppress Mr. Holt’s total volume of litigation against the ADC (*Id.*, ¶¶ 2, 138). Mr. Holt maintains in the operative complaint that Defendants also removed a large stack of Mr. Holt’s criminal case file research and work product and provided it to the ADC’s Security and Terrorist Threat Groups coordinator to support the state’s adverse classification of Mr. Holt as a terrorist (*Id.*, ¶¶ 37(a), 268–274).

Based on the allegations in the operative complaint, which the Court must accept as true at this stage in the proceedings, the Court determines that Mr. Holt has alleged that Defendants took official acts to obtain an unfair advantage and frustrate this and perhaps other lawsuits. *See Christopher*, 536 U.S. at 414-15. Accordingly, the Court sustains Mr. Holt’s objections to Judge Volpe’s recommended dismissal of his First and Fourteenth Amendment claims (Dkt. No. 116, at 8-12).⁵ The Court declines to adopt section II-B of Judge Volpe’s August 30 Recommendation dismissing these claims (*Id.*).

⁵ Because the Court has determined based on the factual allegations in the operative complaint that Mr. Holt may proceed on his interference-with-due-process claim (Count II), as well as his “freedom-of-petition” portion of his First Amendment claim, the Court will not address Mr. Holt’s argument for an expansion of the definition of actual injury (Dkt. No. 110, at 10-16).

D. Conclusion

For the reasons stated above, the Court overrules Defendants' objections to the August 30 Recommendation and sustains Mr. Holt's objections to the August 30 Recommendation. Mr. Holt shall be allowed to proceed with all of his claims arising after he filed his original complaint on November 21, 2022, as well as his interference-with-due-process claim (Count II), and his "freedom-of-petition" portion of his First Amendment claim.

V. Appeal of Judge Volpe's Decision Denying Motion For Order And To Intervene

Before the Court is Mr. Guinther's appeal of Judge Volpe's Order denying his motion for order and to intervene (Dkt. No. 128). No party has responded to the appeal, and the time for doing so has passed. For the following reasons, the Court denies Mr. Guinther's appeal of Judge Volpe's Order denying his motion for order and to intervene (Dkt. No. 128).

A. Background

On May 31, 2024, Mr. Guinther filed a motion for return of case file and to intervene (Dkt. No. 83). In a text Order docketed on June 3, 2024, Judge Volpe granted Mr. Guinther's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) (Dkt. No. 86). Judge Volpe ordered counsel for both sides to "make best efforts" to return the file in question to Mr. Guinther no later than July 3, 2024 (*Id.*). Judge Volpe ordered counsel to notify the Court that the file had been returned to Mr. Guinther or state why that was not possible (*Id.*).

On July 2, 2024, Defendants filed a status report and notice of return of confiscated property to Mr. Guinther with the Court (Dkt. No. 102). In what the Court assumes was a typographical error, Defendants state in the "Notice of Return of Confiscated Property to Inmate Edgar Guinther," that "Inmate Dennis Stuart's documents were returned to him on July 1, 2024." (Dkt. No. 102, ¶ 3).

After receiving Defendants' status report and notice of return of confiscated material, on July 8, 2024, Judge Volpe entered a text Order denying as moot Mr. Guinther's motion to require Mr. Holt's presence at the time of the return of legal property and terminating Mr. Guinther from the case (Dkt. No. 105).

On September 26, 2024, Mr. Guinther again sought the return of his case file and to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) (Dkt. No. 121). Mr. Guinther alleged that Mr. Holt told him that more of his files are in defendant Deputy Warden Maurice Culclager's office and Deputy Warden Culclager will not return the files to him without a Court order (*Id.*, ¶¶ 5, 7). Mr. Guinther asserts that he is eligible to reapply for an executive clemency in November 2024 and needs the documents (*Id.*, ¶ 8). In his September 26, 2024, Order denying the motion for order and motion to intervene, Judge Volpe determined that Mr. Guinther's motion was based on "others' supposed statements" (Dkt. No. 122). Further, Judge Volpe points out that the "supporting declaration predates Defense Counsel's [July 2, 2024] notice to the Court stating that the documents have been returned." (*Id.*). Judge Volpe noted that Mr. Guinther had not identified the documents that he asserts are important to his clemency case that Defendants are withholding (*Id.*). Judge Volpe states that, if Mr. Holt's counsel are aware of documents belonging to Mr. Guinther, counsel should notify counsel for Defendants and see if the situation may be rectified or notify the Court (*Id.*).

The next day, Mr. Guinther filed a supplemental motion for return of legal files and to compel stating that Deputy Warden Culclager placed his legal property in a labeled brown paper sack in his office and told him that he would not give it to him because it was the product of trafficking and trading (Dkt. No. 123, ¶ 3). Mr. Guinther asserts that Defendants' counsel told Deputy Warden Culclager that all property could be returned (*Id.*, ¶ 4).

On October 22, 2024, Mr. Guinther appealed Judge Volpe's decision to deny his motion for order and to intervene. For the following reasons, the Court denies Mr. Guinther's appeal of Judge Volpe's decision.

B. Standard

As set forth above, the standard of review applicable to an appeal of a magistrate judge's order on nondispositive issues is extremely deferential. The Court must affirm an order by a magistrate judge unless it is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a).

C. Analysis

In his appeal of Judge Volpe's decision denying his motion for order and to intervene, Mr. Guinther argues that he needs the documents that he asserts are in Defendants' possession so that he can "meet the clemency filing deadline of November 1, 2024" (Dkt. No. 128, at 2). Mr. Guinther contends that, if he does not make the deadline, he would be forced to wait at least eight more years before reapplying and could be precluded from reapplying until Governor Sanders leaves office (*Id.*).

Mr. Guinther has not identified the documents he believes were not returned or are in Defendants' possession, and the deadline for Mr. Guinther to file his clemency petition has passed. Counsel for Defendants have represented to the Court that all of Mr. Guinther's documents have been returned to him, and Mr. Guinther still has not identified any that are missing (Dkt. No. 102, ¶ 3). From the Court's reading of Mr. Guinther's filings, Mr. Holt believes that Defendants may possess such documents (Dkt. No. 121, ¶ 6). No party has responded to Mr. Guinther's appeal. The Court cannot conclude, based on the record before it, that Judge Volpe's decision was clearly erroneous or contrary to law.

D. Conclusion

For all of these reasons, the Court denies Mr. Guinther's appeal of Judge Volpe's decision to deny his motion for order and to intervene (Dkt. No. 128).

VI. Conclusion

The Court rules as follows:

1. The Court denies Mr. Holt's appeal of Judge Volpe's decision denying the return of 27 prisoners' legal property (Dkt. No. 103).

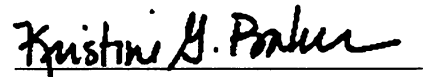
2. The Court adopts Judge Volpe's August 8 Recommendation dismissing Secretary Wallace from this lawsuit (Dkt. No. 114). The Clerk is directed to dismiss Secretary Wallace as a defendant in this matter.

3. The Court adopts, in part, and declines to adopt, in part, Judge Volpe's August 30 Recommendation (Dkt. No. 116). The Court declines to adopt section II-B of Judge Volpe's August 30 Recommendation, which recommends granting Defendants' motion to dismiss Mr. Holt's access to the courts and due process claims without prejudice (Dkt. No. 116, at 12). Mr. Holt may proceed with these claims. The Court overrules Defendants' objections and adopts the other aspects of Judge Volpe's August 30 Recommendation as set forth in this Order (Dkt. No. 116).

4. The Court denies Defendants' motion to dismiss the operative complaint, or alternatively, motion for more definite statement (Dkt. No. 84). At this stage, Mr. Holt may pursue all of the claims in the operative complaint (Dkt. No. 68).

5. The Court denies Mr. Guinther's appeal of Judge Volpe's Order denying his motion for order and motion to intervene (Dkt. No. 128).

So ordered this 10th day of March, 2025.



Kristine G. Baker
Chief United States District Judge

EXHIBIT B

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Eastern District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 5/8/2025 at 3:32 PM CDT and filed on 5/8/2025

Case Name: Holt v. Wallace et al

Case Number: 4:22-cv-01132-KGB-JJV

Filer:

Document Number: 148(No document
attached)

Docket Text:

(This is a TEXT ENTRY ONLY. There is no pdf document associated with this entry.) **ORDER:** The parties met for a settlement conference this day and additional work is necessary to reach a settlement. Accordingly, discovery is stayed. A status conference will be held on 7/1/2025. Signed by Magistrate Judge Joe J. Volpe on 5/8/2025. (lej)

4:22-cv-01132-KGB-JJV Notice has been electronically mailed to:

Carl F. Cooper, III (Terminated) trey.cooper@arkansasag.gov, AGCivil@ArkansasAG.gov,
monique.fleming@arkansasag.gov, shannon.keeley@arkansasag.gov

John Charles Williams john@acluarkansas.org, hadiyah@acluarkansas.org, holly@acluarkansas.org,
shelby@acluarkansas.org

Carolyn M. Homer cmhomer@mofo.com, carolyn-homer-5021@ecf.pacerpro.com

Brian Matthew Hauss bhauss@aclu.org

Aditya V. Kamdar akamdar@mofo.com

4:22-cv-01132-KGB-JJV Notice has been delivered by other means to:

EXHIBIT C

From: [Homer, Carolyn M.](#)
To: [Joe Volpe](#); [Trey Cooper](#)
Cc: [John Williams](#)
Subject: RE: Question
Date: Thursday, May 8, 2025 5:39:59 PM
Attachments: [image001.png](#)

Thank you, Judge Volpe, for your time and attention today.

For both your Honor and Mr. Cooper, I do have one important note to add after today about the federal transfer option. Mr. Holt, after thinking about it on the ride home, has expressed some concerns about a transfer to the federal system.

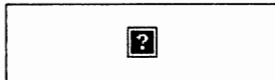
First, he is concerned that transferring him would be used as a reason for the ADC to lose momentum at making progress on digitization (e.g. a scanning system for incoming mail, an email or file system for his legal records on his tablet, access to PACER/AR Courts in the law library, etc.) and other practical options we discussed today. He is cognizant that digital solutions stand to benefit everyone, not just Mr. Holt, and he feels strongly that he wants to use this litigation to help others as well. He's worried if he's transferred that will stop discussions of the digitization options and will otherwise slow down the progress we made today.

Second, Mr. Holt would like confirmation that a **transfer will only happen with advance notice to him and counsel, and with his express written consent**. He's a bit worried based on other transfers he's seen that he could be loaded into a transport van quickly with very little notice. If a federal transfer is a decision that is being made as part of a settlement, we would prefer the process to be deliberate and not rushed.

Thank you,

Carolyn Homer
Of Counsel
cmhomer@mofo.com
T: +1 (202) 887-6945

Morrison Foerster
2100 L Street, NW, Suite 900
Washington, DC 20037



[mofo.com](#) | [LinkedIn](#)

From: Joe Volpe <Joe_Volpe@ared.uscourts.gov>
Sent: Thursday, May 8, 2025 3:04 PM
To: Trey Cooper <trey.cooper@arkansasag.gov>; Homer, Carolyn M. <CMHomer@mofo.com>
Subject: FW: Question

External Email

FYI. Thank you both again for your efforts today.

The District of Oregon has an e-filing program that allows litigants in state custody to file and receive documents electronically in CM/ECF with the assistance of their law librarian (pilot program standing order attached).

SFB

From: Joe Volpe <Joe_Volpe@ared.uscourts.gov>

Sent: Wednesday, May 7, 2025 11:42 AM

To: Andrea Johnstone <Andrea_Johnstone@nhd.uscourts.gov>; Caroline Gentry <Caroline_Gentry@ohsd.uscourts.gov>; Daniel Irick <Daniel_Irick@flmd.uscourts.gov>; Douglas Arpert <JudgeDouglas_Arpert@njd.uscourts.gov>; Janis van Meerveld <Janis_vanMeerveld@laed.uscourts.gov>; Mary Alice Theiler <MaryAlice_Theiler@wawd.uscourts.gov>; Michael Aloï <MJ_Aloi@wvnd.uscourts.gov>; Michael Roemer <Michael_Roemer@nywd.uscourts.gov>; Nancy Joseph <Nancy_Joseph@wied.uscourts.gov>; Patty Barksdale <Patricia_Barksdale@flmd.uscourts.gov>; Shiva Hodges <Shiva_Hodges@scd.uscourts.gov>; Stacie Beckerman <Stacie_Beckerman@ord.uscourts.gov>; Sunil Harjani <Sunil_Harjani@ilnd.uscourts.gov>; Suzanne Mitchell <Judge_Suzanne_Mitchell@okwd.uscourts.gov>; Zia Faruqui <Zia_Faruqui@dcd.uscourts.gov>

Subject: Question

Hey my friends,

I have a mediation with a prisoner tomorrow and have a question - Do any of your prison law libraries allow CM/ECF access for inmates? Any help is appreciated!

Thank you!

Joe

Joe J. Volpe
United States Magistrate Judge
Eastern District of Arkansas
(501) 604.5190

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

GREGORY HOLT, ADC #129616
also know as Abdul Maalik Muhammad

PLAINTIFF

v.

CASE NO. 4:22-CV-001132-KGB-JJV

DEXTER PAYNE, *et al.*

DEFENDANTS

DECLARATION OF DEXTER PAYNE

I, Dexter Payne, am competent to testify and have personal knowledge regarding the statements contained in this declaration, and do hereby state and verify the following:

1. I am currently employed as the Director of the Arkansas Department of Corrections—Division of Correction Facilities (“ADC”). I have held this position since July 2019 and have been employed by the ADC in various positions since 1990.

2. I am aware that Inmate Gregory Holt (ADC #129616) filed the above referenced lawsuit against me.

3. I have reviewed the relevant portions of inmate Holt’s institutional record to provide this declaration.

4. On May 8, 2025, I participated in a settlement conference in this matter via phone.

5. It was during the May 8, 2025, settlement conference that inmate Holt first raised the idea of a transfer to a federal prison.

6. After the settlement conference, I initiated a request to transfer inmate Holt to the Federal Bureau of Prisons.

7. On June 3, 2025, my office received notice that the request to transfer inmate Holt to the Federal Bureau of Prisons had been approved.

EXHIBIT

2

exhibitluc.com

8. In preparation for the transfer, inmate Holt was told to box up his legal documents so that he can have the documents sent to his counsel.

9. Furthermore, like all inmates who are informed they are being transferred, inmate Holt was moved to administrative segregation and denied telephone access until the transfer for the safety and security of the officers who would be transporting him to the Federal Bureau of Prisons.

I declare under penalty of perjury that the above information is true and correct to the best of my knowledge.

FURTHER DECLARANT SAYETH NOT.


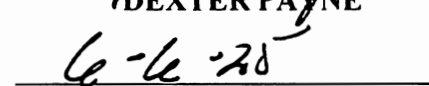

DEXTER PAYNE

DATE

EXHIBIT E

7/2/25, 10:59 AM

ADC

THE ARKANSAS DEPARTMENT OF CORRECTIONS

Inmate Search

Information current as of 07/02/2025

**ADC #129616****Holt, Gregory H**

ADC Number	129616
Name:	Holt, Gregory H
Race	CAUCASIAN
Sex	MALE
Hair Color	BROWN
Eye Color	HAZEL
Height	72 inches
Weight	204 lbs.
Birth Date	06/17/1975
Initial Receipt Date	06/10/2010
Facility	Interstate Compacts
Facility Address	N/A
Mailing Address	N/A
Custody Classification	C4
Good Time Class	I-C
PE/TE Date*	Life
Total Time*	
ADC Incarcerations**	2

* may be affected by other laws and regulations

** Incarcerations: the number of times an offender has been incarcerated with the Division of Correction. An individual may have multiple incarcerations for a single conviction.

Aliases

Jamil Al-Am Al-Faris Carlos Jackson Malik
Muhammad

Description

apendix (6 POINT STAR "G" INSIDE LEFT ARM-----
RIP, 6 POINTS STAR WITH PITCHFORK, C-LOC
(MOON)"5150" (SCORPION)"ALLAH" Six Point Star
INSIDE RIGHT ARM----SKULL WITH HORNS
(SKULL)"PROP" "OF" "501"(BARS BRICKS
FENCE)BACK OF ARM "CLOC" (BRICKWALL)
"21696" "0061" "HARDTIME" (SKULL) FRONT.6
POINT STAR WITH PITCHFORK S/ R BARWIRE
FENCE (6 POINT STAR) (PITCHFORK) FRONT."I 2
D"DISCIPLE""FN"(SCORPION) (6 POINT STAR)
FRONT."SR"

7/2/25, 10:59 AM

ADC

Current Prison Sentence History

OFFENSE	SENTENCE DATE	COUNTY	CASE #	SENTENCE LENGTH
Aggravated Residential Burglary - Habitual Offender	06/03/2010	PULASKI	2009-2188	Life
Domestic Battering 1st - Habitual Offender	06/03/2010	PULASKI	2009-2188	480 mo.

Prior Prison Sentence History

Note: Data reflected covers periods of incarceration since ---

OFFENSE	SENTENCE DATE	COUNTY	CASE #	COM. SUP. LENGTH
Filing A False Report	10/22/2003	FAULKNER	2003-446	72 mo.

Detainers

Note: Further information may be obtained by contacting the detaining agency

DETAINER DATE	DETAINER AGENCY	CHARGE	TYPE	DATE CANCELLED
02/08/2007	United States Marsha		NTFY	02/08/2007

Major Guilty Disciplinary Violations

DISCIPLINARY VIOLATION	DATE
Failure To Obey Order	02/01/2018
Failure To Keep One's Person Or Quarters	02/01/2018

Risk Score/Level

AGENCY PREPARED BY	DATE COMPLETED	RISK SCORE/LEVEL
--------------------	----------------	------------------

7/2/25, 10:59 AM

ADC

Court Orders (Order of Protection, No Contact Order)

Yes

Program Achievements

PROGRAM ACHIEVEMENT	DATE OF COMPLETION
Technical Violator Program	03/16/2009

Probation/SIS

OFFENSE	SENTENCE DATE	COUNTY	CASE #	COMMUNITY SUP LENGTH	SIS	PROBATION
---------	---------------	--------	--------	----------------------	-----	-----------

Prior Probation/SIS History

OFFENSE	SENTENCE DATE	COUNTY	CASE #	COMMUNITY SUP LENGTH	SIS	PROBATION
Hot Check Violation	11/25/2002	SALINE	01-443-2			3 yrs.
Terroristic Threat.1st Deg	10/22/2003	FAULKNER	2003-1086	72 mo.		72 mo.

EXHIBIT F



DIVISION OF
CORRECTION

6814 Princeton Pike
Pine Bluff, AR 71611



ADMINISTRATIVE DIRECTIVE

SUBJECT: Inmate Grievance Procedure

NUMBER: 19-34

SUPERSEDES: 19-20

APPLICABILITY: All employees and inmates

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REFERENCE: AR 835 - Grievance Procedure for Offenders

APPROVED: Original signed by Dexter Payne

EFFECTIVE DATE: 12/2/2019

I. POLICY:

It is the policy of the Arkansas Division of Correction to provide inmates in its custody an administrative process for the resolution of complaints, problems and other issues.

II. EXPLANATION:

The grievance procedure is an administrative process for the submission and resolution of inmate problems and complaints. The process is designed to solve the problem at the lowest level, as promptly as feasible, and in a manner that is fair, reasonable, and consistent with the Division of Correction's mission.

The administrative process for the resolution of complaints and identification of problem areas is intended to supplement but not replace daily and routine communication between staff and inmates.

III. DEFINITIONS:

- A. Informal Resolution – the first step consisting of a written complaint (Unit Level Grievance Form, Attachment I) by an inmate that is intended to allow staff the



opportunity to resolve an issue on an informal basis, and to serve as a prerequisite to the second step, a formal grievance.

- B. Grievance – the second (formal) step where a written complaint using the same form used for the Informal Resolution (Unit Level Grievance Form, Attachment I) is submitted by an inmate on the inmate's own behalf (an inmate cannot grieve on behalf of another inmate) regarding:
1. A policy applicable within his or her unit/center of assignment that personally affects the inmate;
 2. A condition in the facility that personally affects the inmate;
 3. An action of another inmate, or inmates, that personally affects the inmate;
 4. An action of an employee(s), contractor(s), or volunteer(s) that personally affects the inmate; or
 5. An incident occurring within his or her facility that personally affects the inmate.
- C. Warden – the Warden or Center Supervisor of the facility or designee.
- D. Appeal – a written request directed to a Chief Deputy/Deputy/Assistant Director for further action to resolve the issue or complaint in the grievance based upon the inmate's assertion that the issue has not been resolved at the Unit level. (The appeal cannot raise new or additional issues or complaints.)
- E. Working Days – Monday through Friday, excluding state observed holidays.
- F. Emergency – a problem that, if not immediately addressed, subjects the inmate to a substantial risk of personal injury or other serious and irreparable harm such as, physical abuse. If a grievance, submitted as an emergency grievance by the inmate, is deemed an emergency by the problem solver, the grievance is immediately submitted to the Warden/highest ranking supervisor at the unit without the completion of Step One, the informal process; however, if the grievance is not an Emergency, it will be processed under Step One.
- G. PREA Grievance – Grievance where inmate is alleging staff-on-inmate or inmate-on-inmate sexual abuse or sexual harassment as those terms are defined in the PREA Administrative Directive. A Problem Solver should immediately submit a suspected PREA grievance to the highest ranking supervisor at the unit, who will then contact the duty warden, without the completion of Step One, the informal process; however, if the duty warden finds that the grievance is not a PREA grievance, it will be returned to the Problem Solver and processed under Step One.

H. Non-Grievable Issues – the following matters are not grievable:

1. Parole;
2. Release;
3. Transfer;
4. Job Assignments unless in conflict with medical restrictions;
5. Disciplinary;
6. Anticipated events (i.e., events or activities which may or may not occur in the future);
7. Matters beyond the control of the Division of Correction, including issues controlled by State or Federal law or regulation;
8. Rejection of a Publication
9. A grievance submitted by an inmate on behalf of another inmate.

Note: Claims of Retaliation, even if related to an issue referenced above, are Grievable.

- I. Available Remedies –if the facts asserted by the inmate would, if true, fall within the definition of Grievance, the matter shall be investigated, unless previously investigated. If the grievance is found to be with merit, the Division official designated to respond to the grievance shall have the authority, within the exercise of his or her discretion and consistent with the Division policies and the safety, security and good order of the facility, to offer actions by the Division designed to resolve the inmate's grievance. However, such available remedies do not include disciplinary action against an employee, contractor, or volunteer, nor monetary damages.
- J. Problem Solver – staff designated at each facility to serve as a contact for resolution of a problem or complaint, and specifically, to resolve Step One issues raised in this process. A list of these individuals will be posted in each housing unit. If the Problem Solver(s) is not available, any staff member of the rank of sergeant or above can collect Step One grievances (also referred to as “informal”) and shall then act as the Problem Solver for that Step One grievance.
- K. Medical Department – Health Services Administrator (HSA) or designee.
- L. Mental Health Supervisor – the Division of Correction employee supervising the mental health staff and programs at the unit level.

IV. PROCEDURES:

The inmate grievance procedure is an internal administrative process for the resolution of complaints and the identification of potentially problematic management areas; however, it does not replace daily and routine communication between inmates and staff. Prior to filing a formal grievance (Step Two), an

inmate must first seek a resolution of the complaint informally by taking Step One under this policy.

One form (Attachment I) will be used for both Step One (informal resolution) and Step Two (formal grievance). This same form will be used to submit all inmate grievance issues, including emergencies.

A. Proposed Changes to the Procedure

When the Division proposes to adopt changes to any policy which affects the inmate grievance process, the proposed changes shall be posted in prominent locations **(to include employee and inmate bulletin boards and including electronic distribution) throughout the institution at least 30 days prior to the adoption of the changes.** All comments shall be considered prior to adoption of the change and shall be kept as part of the appropriate policy file documentation. **Inmates in Restrictive Housing will be provided a copy of the proposed change by the Grievance Officer at least 30 days prior to the adoption of the change.**

B. Communication of Procedure

1. Written notification of the Inmate Grievance Procedure, and any changes there to, will be distributed to both inmates and employees. In addition, arriving inmates and new employees will have an opportunity to ask questions about the procedure and have them answered verbally.
2. If an inmate has a disability affecting communication or is not fluent in the English language, interpretive or explanatory services will be made available.
3. All employees at the facility level shall receive training by designated staff in the skills necessary to assist or participate in the inmate grievance procedure.
4. A summary of the Inmate Grievance Procedure will be included in the Inmate Handbook. However, the Inmate Grievance procedure is governed by this Administrative Directive and not any summary in the Inmate Handbook. All inmates shall be provided access to this Administrative Directive.

C. Accessibility

Each inmate shall be entitled to utilize the Inmate Grievance Procedure regardless of his or her security status, custody level, job classification, disciplinary status, or any administrative/ judicial decisions affecting the inmate.

1. Copies of this policy shall be available for examination in each Unit's Law Library.
2. The Attachment I grievance form shall be readily available to any inmate in any housing area at any time; however, no more than five (5) forms per week, except in the case of an emergency as defined in this policy, may be requested by an individual inmate. Additionally, an inmate may not have more than ten (10) blank Attachment I grievance forms in his or her possession at any one time, and no more than twenty (20) unsubmitted (not signed by a Problem Solver) Attachment I grievance forms in his or her possession at any one time.
3. An inmate may request one copy of his or her grievance from the facility grievance staff upon presenting a completed Section 1983 lawsuit or Claims Commission claim. The inmate must provide the grievance number for the particular grievance he/she is requesting.
4. A Grievance must specifically name each individual involved in order that a proper investigation and response may be completed. An inmate must fully exhaust the grievance procedure as a prerequisite to pursuing any legal action related to the subject matter of the grievance. All inmates are hereby advised that the Division reserves the right to raise any and all defenses, including the failure to exhaust the grievance procedure, as to any claim which may have been subject to the grievance procedure and as to any person or entity.

An inmate who fails to name all parties during the grievance process may have his or her lawsuit or claim dismissed by the court or commission for failure to exhaust against all parties.

D. Completion of Forms

1. Inmates who have difficulty understanding how to complete the grievance forms or difficulty actually completing the forms should request and will be provided with assistance from staff. However, there is no prohibition against an inmate seeking assistance from another inmate if the grievant has language barriers or cannot read or write.
2. Only one Unit Level Grievance Form (Attachment I) can be submitted per grievance and only one problem/issue should be stated in the grievance, not multiple problems/issues. An inmate must use a separate form for each issue. Only one issue will be addressed in the response to a grievance. Additional problems/issues contained in the grievance will not be addressed and will not be considered as exhausted. Inmates are reminded that exhaustion of an issue is a prerequisite to filing a lawsuit related to that issue in accordance with the Prison Litigation Reform Act of 1995.

3. If the inmate is legally using a name other than the name under which he or she was committed to the Arkansas Division of Correction, both the legal and commitment names shall be used when completing the forms.
4. All forms, except those submitted electronically where and when electronic submission is available, must be legible and in ink, if available. Tape and other adhesive substances should not be used on any grievance forms.
5. If any Grievance Form is received in an unsanitary condition, that form(s) may be photographed and logged and held for evidence for appropriate disciplinary action against the inmate. Unsanitary grievance forms will not be accepted. The Problem Solver will return the grievance form to the inmate and then complete an Incident Report (Form 005).

E. Step One: Informal Resolution Procedure

Inmates are required to seek an informal resolution of a problem/complaint prior to filing a grievance.

1. The Unit Level Grievance Form (Attachment I) shall be completed and submitted within 15 days after the occurrence of the incident, with the date indicated beside "Step 1: Informal Resolution". PREA grievances are not subject to the 15 day time limit.
2. On the Unit Level Grievance Form (Attachment I), and only in the space provided, the inmate should write a brief statement that is specific as to the substance of the issue or complaint to include the date, place, personnel involved or witnesses, and how the policy or incident affected the inmate submitting the form. Illegible or unintelligible grievances will not be accepted, but rather will be returned to the inmate by the Problem Solver with an explanation stating why the grievance will not be accepted. The Problem Solver will then complete an Incident report (Form 005).

Additional sheets, including additional pages of the grievance written on Unit Level Grievance Forms (Attachment I) should not be attached and will be returned to the inmate upon submission or as soon as practical. **ONLY THE STATEMENT IN THE SPACE PROVIDED ON THE ATTACHMENT I FORM WILL BE MAINTAINED AND CONSIDERED THE GRIEVANCE SUBMISSION.** However, additional sheets attached to PREA grievances will be maintained with the grievance.

3. The Unit Level Grievance Form (Attachment I) should be presented to one of the individuals whose name is posted in the housing unit as a designated Problem Solver. If a Problem Solver is not available, any staff

member holding the rank of sergeant or above can collect a Step One grievance and shall then act as the Problem- Solver for that Step One grievance. If it is a PREA grievance, any staff member may act as the problem solver. At this time, the Problem Solver or staff member must sign and date the form, giving the inmate back the yellow and pink copies as receipts.

4. After receipt of the Unit Level Grievance Form (Attachment I), the Problem Solver will:
 - a. meet with the inmate within three working days to resolve the issue; or
 - b. meet with the inmate immediately to resolve the issue if it is an emergency; or
 - c. refer medical issues to the HSA (examples include, but are not limited to, missed medications, inability to access medical services, failure to be seen at Sick Call or clinic appointments, or failure to receive lab or test results) as soon as practical, but in any event within one working day; or
 - d. refer mental health issues to the Mental Health Supervisor as soon as practical, but in any event within one working day; or
 - e. If the grievance is a PREA grievance, immediately notify the highest ranking officer at the unit or Duty Warden who will immediately cause the initiation of an investigation.
5. If the inmate believes the matter to be an Emergency, as defined in this Administrative Directive, he/she will fill in the date beside "Emergency Grievance" on the Unit Level Grievance Form to designate the grievance as an Emergency, and present the form to any staff member, but preferably a designated Problem Solver. If that staff recipient determines that an Emergency does exist, corrective action shall be taken as soon as possible and within no more than twenty-four (24) hours. If the staff recipient determines that no Emergency exists, the informal resolution form shall be processed within the normal time limits stated within this policy.
6. Upon receipt of a Unit Level Grievance Form submitted under Step One, the HSA, or medical department representative appointed by the HSA, or the Mental Health Supervisor will take whatever action is deemed clinically appropriate to fully resolve the problem, document the action taken, or state why no action is necessary or appropriate. The HSA or Mental Health Supervisor or designee will sign the form in the space provided for the staff signature which is found on the same line as the inmate signature following the description of the action taken to resolve the complaint. Please note the staff signature should NOT be in the space provided for the signature of the designated Problem Solver.

7. As soon as practical, the HSA, Mental Health Supervisor, or designee will return the Unit Level Grievance Form to the inmate and provide a copy to the Grievance Officer. NOTE: In no event should this period exceed three (3) working days from submission of the Unit Level Grievance Form for Step One by the inmate to the Problem Solver. The HSA, Mental Health Supervisor, or designee should not respond to a grievance that is alleging misconduct by that individual against the inmate; however, where the inmate still has another step in the grievance process to challenge the conduct or the inmate is alleging indirect misconduct (failure to act) as opposed to direct misconduct, such as physical abuse or retaliation, by the HSA or the Mental Health Supervisor, then the Regional Manager or Mental Health Administrator will respond after the medical or mental health department has appropriately logged the resolution.
8. The HSA or Mental Health Supervisor will retain a copy for his or her records and for quality improvement purposes.
9. If the problem (those not referred to medical or mental health departments) can be resolved at the informal level, the Problem Solver should document the action taken on the Unit Level Grievance Form (Attachment I) and then both the inmate and the Problem Solver must sign and date the form.
10. If the problem cannot be resolved at Step One, the informal level, the Problem Solver must still document the resolution attempt on Attachment I, and then the inmate and the Problem Solver must sign and date the form. At this time, if the inmate chooses, he/she may now proceed to Step Two (the formal grievance) using this same form (Attachment I). See procedures for Step Two below.
11. If the designated Problem Solver (or substituted person to resolve the issue such as a medical or mental health staff member) has failed to contact the inmate and attempt resolution of the complaint or failed to return Step One (the grievance) within the designated three working days, the inmate may proceed to Step Two, the formal grievance, without the completion of Step One. In that instance, Step Two, the formal grievance, must be filed no later than six (6) working days from the original submission of the Unit Level Grievance Form pursuant to Step One: this allows three (3) working days to wait for a response to Step One, and three (3) working days to initiate Step Two. (These are not three (3) additional days, i.e., if the Problem Solver returns Step One on the day it was submitted, the inmate has only three (3) working days from receipt of that response to file Step Two.) The inmate will submit a copy of his/her Unit Level Grievance Form using the pink or yellow copy, whichever is most legible, that he/she retained following the instructions for Step Two.

12. Whether or not the problem is resolved, the inmate should retain either the pink or yellow copy, whichever he did not submit for Step Two. A copy may be retained by the designated Problem Solver, and a copy is forwarded to the Grievance Officer for entry into the offender tracking system if necessary.
13. If an inmate has been transferred from the Unit where the incident or issue arose within the fifteen (15) days allowed to file Step One and the inmate submits Step One at a different Unit, and if the Problem Solver, HSA, or Mental Health Supervisor cannot address the issue because of the transfer, then the response to Step One should be "proceed to Step Two." Upon submission of Step Two, the Grievance Officer will complete the portion of the Unit Level Grievance Form indicating the date received and to whom it was sent and immediately forward the grievance to the Grievance Officer at the unit where the incident or issue arose to process with a grievance number from that Unit. The deadlines will remain the same under this procedure to submit the grievance steps, and to respond with the date of submission to the first Grievance Officer beginning the response time.

F. Step Two: the Formal Grievance Procedure

After attempting to resolve the issue through Step One, informal resolution, an inmate can proceed to Step Two by filing a formal grievance on the same Unit Level Grievance Form (Attachment I) that was used for Step One.

1. The inmate should complete the date beside "Step Two: Formal Grievance" and the section regarding resubmission (of this form) including an explanation why the inmate considers the informal resolution unsuccessful, and deposit it into the designated grievance box, or submit it to a Staff Member if the inmate's assignment prevents access to the grievance box. The Grievance Officer shall collect grievance forms daily, excluding weekends and holidays.
2. Additional sheets cannot be attached to the Unit Level Grievance Form (unless it is a PREA grievance) and only information in the space provided will be considered part of the grievance submission. Any new issues added to the form will not be considered.
3. Upon receipt, the Grievance Officer shall complete the box "for office use only" on the Unit Level Grievance form by assigning a number to the grievance (using unit and subject codes as described in the Grievance Procedure Codes-Attachment VII), and logging the date the grievance was received, inmate's name, ADC number, type of grievance, and the text of the inmate's complaint contained within the appropriate space on Attachment I in eOMIS.

- a. All medical issues will be coded 600 by the Unit Grievance Officer. All mental health issues will be coded 630.
 - b. The Medical and Mental Health Departments will assign more specific type codes as indicated on Attachment VII into eOMIS when completing the response to the grievance.
4. The Grievance Officer shall then transmit an Acknowledgement or Rejection of the Unit Level Grievance Form (see Attachment II) to the inmate within five (5) working days after receipt. No acknowledgment is required if a written response to the grievance, signed by the Warden, Health Services Administrator, or Mental Health Supervisor or designees, can be provided within five (5) working days.
5. The Grievance Officer will note whether the grievance is medical or mental health related. Such Step Two medical or mental health grievances will be forwarded as soon as possible, and in no event later than five (5) days, to the appropriate medical or mental health department for investigation and response to the inmate.
 - a. If the grievance is medical in nature, it is forwarded to the Health Services Administrator (HSA) at the Unit Medical Department for a response. The HSA, or designee, should not respond to a grievance that is alleging misconduct by that individual unless the inmate still has another step in the grievance process to challenge the conduct, or the inmate is alleging indirect misconduct (failure to act). Where the inmate is alleging direct misconduct (such as physical abuse or retaliation) by the HSA, then the appropriate Regional Manager will respond after the medical department has appropriately logged the resolution.
 - b. If the grievance relates to mental health services, the supervisor of mental health services for the facility, or designee, will answer the grievance. The Mental Health Supervisor, or designee, should not respond to a grievance that is alleging misconduct by that individual unless the inmate still has another step in the grievance process to challenge the conduct, or the inmate is alleging indirect misconduct (failure to act). Where the inmate is alleging direct misconduct (physical abuse or retaliation) by the Mental Health Supervisor, then the Mental Health Administrator at Central Office will respond after the mental health department has appropriately logged the resolution.
6. The Inmate Grievance Worksheet (see Attachment VIII) may be used by staff when investigating grievances.

7. Every inmate grievant shall receive a written or electronic response to his or her grievance within 20 working days of receipt (or more promptly in the case of an Emergency grievance). The response will be on the form entitled Warden/Center Supervisor Decision (Attachment III) and signed by the Warden or the Warden's designee. In the case of a medical or mental health grievance, the response will be on the form entitled Health Services Response to Unit Level Grievance (see Attachment IV) from the medical or mental health department.

The Unit Level Grievance Response/Decision shall include:

- a. the reason for the decision, in clear, well reasoned terms; and
 - b. a statement that the Grievance:
has merit and requires further action for resolution; or
has merit, but is being resolved; or
had merit but has been resolved; or
has no merit.
8. The Grievance Officer will meet with the Warden for the appropriate response to the grievance. If the Warden refers a PREA investigation to IAD, the grievance response is sent after the Warden receives the Director's disposition of suspected PREA allegation.
 9. If an inmate has not received a response to his/her Unit Level Grievance within the allotted time frame as stated on the Acknowledgement Form or the Extension Form, if applicable, the inmate may move to the next level of the process, an appeal to the Chief Deputy/Deputy/Assistant Director Level. In this instance, the appeal must be filed no later than five (5) working days.

The Grievance Extension Form will be used in cases where a longer period is required for a response to or resolution of the problem. The inmate shall be notified by the responding authority, in writing, of the reason for the delay and its expected length on the Grievance Extension Form (see Attachment X). Time limits for responding will be extended automatically upon the completion of the Grievance Extension Form (Attachment X), unless the inmate disagrees in writing to the extension. If the inmate does not agree to the extension, the inmate understands and agrees that, with that decision, no further action will be taken on the issue, and the grievance will be returned to the inmate without a decision on its merit. By disagreeing with the extension, the inmate waives his or her right to have the grievance issue considered. If a second or additional extension is needed, the extension will be granted only upon approval of the Warden or Deputy Warden at the Step Two level.

G. Steps to Appeal the Unit Level Grievance Decision:

After receiving a response from the Warden, the Health Services Administrator (HSA), the Mental Health Supervisor, or applicable designee, if the inmate is not satisfied, he or she may appeal to the appropriate Chief Deputy/Deputy/Assistant Director who will attempt to resolve the matter or assign an appropriate staff member to do so. In this instance, the appeal must be filed within the five (5) working days from the date of the response.

1. The appeal must be written in the space provided above the signature line on the original Warden/Center Supervisor's Decision Form (Attachment III), the Health Services Response to Unit Level Grievance Form (Attachment IV) for medical or mental health grievances entitled Inmate's Appeal (see Attachment III and IV), or the Acknowledgement or Rejection of Unit Level Grievance (Attachment II). Only what is written in the space provided above the signature line for appeal will be considered part of the grievance appeal. Except for a PREA grievance, additional sheets should not be attached and will be returned to the inmate upon receipt of the appeal or as soon as practical. **ONLY THE STATEMENT IN THE SPACE PROVIDED ABOVE THE SIGNATURE LINE WILL BE MAINTAINED AND CONSIDERED PART OF THE APPEAL SUBMISSION.**
2. To appeal the inmate must include the original (no photocopies) Unit Level Grievance Form (Attachment I), which describes the matter originally grieved, and either the Warden/Center Supervisor Decision Form (Attachment III), the Health Services Response to Unit Level Grievance (Attachment IV), or the Acknowledgement or Rejection of Unit Level Grievance (Attachment II) if the inmate is asserting the grievance was improperly rejected or if the inmate did not receive a response or extension within the applicable timeframe. The inmate should deposit the appeal into the designated grievance box; or submit it to a Staff Member if the inmate's assignment prevents access to the grievance box. If these two (2) pages are not submitted with the inmate's appeal portion completed, the appeal may be returned to the inmate as rejected.

To complete the appeal, the inmate must state a reason for the appeal, and must date, sign, and write the inmate's ADC number on the attachment being appealed.

Do not list additional issues, requests, or names which were not a part of the original grievance, as those will not be addressed.

3. The Chief Deputy/Deputy/Assistant Director may process a grievance appeal not meeting the criteria set forth above when necessary for the

safety and security of the Department

4. Appeals relating to medical, mental health or treatment program issues are submitted to the Deputy Director for Health and Correctional Programs.

All other grievances will be forwarded to the appropriate Chief Deputy/Deputy/Assistant Director for Institutions.

All Appeals will be answered by the Chief Deputy/Deputy/Assistant Director regardless of whether those individuals are named in the grievance.

5. Receipt of the appeal shall be acknowledged or rejected within five (5) working days unless a response can be provided within five (5) working days to the grievance signed by the Chief Deputy/Deputy/Assistant Director. The response shall be in written or electronic format.
6. The Chief Deputy/Deputy/Assistant Director will respond to the inmate concerning the decision within thirty (30) working days unless there is an extension or the appeal is rejected and the inmate is notified of the reason for rejection on the Acknowledgment of Grievance Appeal/Rejection of Appeal form (see Attachment V). A decision or rejection of an appeal at this level is the end of the grievance process. The response shall be in written format.
7. If a grievance appealed is a duplicate of one previously appealed by the inmate with regard to the staff member named, the date of the incident, and the subject of the grievance, the inmate will be sent an Acknowledgment of Grievance Appeal/Rejection on Attachment V, and it will be noted as "Duplicate of _____" and the earlier grievance number will be filled in the blank; the duplicate will be returned to the inmate with the Attachment V.
8. The Grievance Extension Form will be used in cases where a longer period is required for a response or resolution of the problem. The inmate shall be notified by the responding authority, in writing, of the reason for the delay and its expected length on the Grievance Extension Form (see Attachment X). Time limits for responding will be extended automatically upon completion of the Grievance Extension Form (Attachment X), unless the inmate disagrees in writing to the extension. If the inmate does not agree to the extension, the inmate understands and agrees that, with that decision, no further action will be taken on the issue, and the grievance appeal will be returned to the inmate without a decision on its merit. By disagreeing with the extension, the inmate waives his or her right to have the grievance issue considered or exhausted. A second or subsequent

extension can be granted only with the approval of the Chief Deputy/Deputy/Assistant Director.

9. The entire grievance procedure should be completed within seventy-six (76) working days unless a valid extension has been executed, or it can be documented that unforeseen circumstances have occurred.
10. Release of the inmate from custody will normally terminate his or her grievance, unless the parties are under court order to exhaust remedies or the grievance highlights a problem that needs to be addressed at the discretion of the Chief Deputy/Deputy/Assistant Director, or designee.

H. Remedies

A grievance with merit will be afforded a reasonable range of meaningful remedies.

1. The responsible authority will review the conditions, policies or practices grieved and take appropriate action.
2. When a higher authority than the responding authority must authorize appropriate action, the lower authority shall note its agreement or disagreement with the inmate and transmit the completed grievance form to the higher authority with notice to the inmate.
3. The Division is to encourage the resolution of grievances found to have merit involving property losses, confiscations or forfeitures through the return of the property or replacement.
4. Errors in record keeping may be corrected and action by the staff or Classification Committees may be modified as appropriate.
5. No grievance should be discussed between or among employees and inmates except as necessary to obtain statements or to resolve the issues.
6. No employee should respond to a grievance that is alleging misconduct by that employee against the inmate unless (a) the inmate still has another step in the grievance process to challenge the conduct, or (b) the inmate's allegation was of indirect misconduct (conduct by omission). Where the inmate is alleging direct misconduct (such as physical abuse) by the employee, the employee shall not respond to the grievance. No employee may respond to a grievance that is alleging sexual harassment or sexual abuse by that employee against the inmate.

I. Allegations of Abuse

Any credible allegation of excessive force, sexual harassment or abuse, assault, or similar physical abuse of an inmate will be forwarded to the Internal Affairs Division for an investigation consistent with Arkansas Division of Correction policies.

J. Abuse of the Grievance Procedure

Abuse of the grievance procedure by inmates will be dealt with in the following manner:

1. Excessive Use of the Procedure

- a. Step One, Informal Resolutions, are limited to five (5) per seven-day period because excessive submissions may cause a delay in processing inmate grievances. The Warden or designee must maintain a record of five (5) submissions each seven-day period before rejecting one from that inmate. Only the first five (5) informal grievances, Step One, will require a response. The seven-day period will begin each Saturday and end on Friday. The submissions that exceed the limit will be marked as "No action necessary-exceeds weekly limit," followed by the staff person's name, signature and date verifying that person verified (1) that five (5) submissions under Step One had already been received from the inmate that seven-day period, and (2) it was not an emergency. A submission rejected under this section shall be returned to the inmate.
- b. Inmates are only allowed to submit three formal grievances, Step Two, each seven-day period which begins each Saturday and ends on Friday. Only the first three formal grievances, Step Two, submitted each seven-day period by an inmate require an investigation and response. This limit includes both institutional and medical or mental health grievances. All other formal grievances will be logged and reviewed to determine if an emergency exists. If it is determined to be an emergency, action will be taken promptly to resolve the issue; however, a written response to the inmate is not required. If no emergency exists, the grievance will be logged out on the same day received, and it shall be written on the Unit Level Grievance Form "No action necessary-exceeds weekly limit," dated and signed. The original grievance will then be placed in the grievance file and no written response will be given to the inmate.

- c. If the formal grievance is regarding a health issue, but exceeds the inmate's limit for weekly submission, the grievance officer will note at the top of the grievance form "EXCEEDS WEEKLY LIMIT." The formal grievance will then be forwarded to the medical or mental health department to determine if an emergency exists. If the medical or mental health departments determine the grievance to be an emergency, the Health Services Administrator or Mental Health Supervisor will ensure that prompt action is taken to resolve the issue; however, a written response to the inmate is not required. If neither the medical nor mental health departments determine the grievance to be an emergency, it will be noted at the top of the grievance form, "not an emergency" beside the "EXCEEDS WEEKLY LIMIT" statement, dated and signed by the Health Services Administrator or Mental Health Supervisor and returned to the Grievance Officer for filing.
- d. If a formal grievance is a duplicate of one previously submitted by the inmate with regard to the staff member named, the date of the incident, and the subject of the grievance, the duplicate grievance will be logged into eOMIS, the inmate will be sent a Rejection of Grievance on Attachment II, and note at the top of the grievance form as "Duplicate of _____" and the earlier grievance number will be filled in the blank; the duplicate will be returned to the inmate with the Attachment II and counted as one of the inmate's weekly submissions.
- e. If the duplicate grievance is regarding a health issue, the grievance officer will forward the logged grievance and Rejection of Grievance Attachment II to medical or mental health to determine if a response is necessary or an emergency exists. If necessary, the Health Services Administrator or Mental Health Supervisor will ensure that prompt action is taken to resolve the issue, and if not, the medical or mental health staff will note at the top, "no response necessary on duplicate," date and sign it, and return both the grievance and Rejection of Grievance Attachment II to the inmate.

2. Frivolous and Vexatious (Provoking or Harassing) Use of the Procedure

- a. A frivolous or vexatious submission at any step will be logged and returned to the inmate with a Rejection form (Attachment II or Attachment V) and counted as one of the inmate's weekly submissions.
- b. A submission is frivolous when it is clearly insufficient on its face to allege an issue or concern and is readily recognizable as devoid of merit and insufficient for resolution or appeal.

- c. A submission is vexatious when it merely agitates, provokes, harasses or irritates by petty provocation and is not designed to lead to any practical result, resolution, or appeal.

3. Use of Threats

An inmate who use the grievance procedure to direct threats at another will have the grievance rejected and copies will be referred to Internal Affairs to consider for referral for prosecution.

4. Malicious Use of the Procedure

Any inmate who knowingly makes false statements in a submission for the purpose of harming another person will have the grievance rejected.

K. Reprisals or Retaliation

1. No inmate shall suffer any threat or action based on his or her appropriate use of, or participation in, the grievance procedure. If an inmate believes he/she has been retaliated against for the use of the grievance procedure, he/she must contact the Warden/Center Supervisor or in a case of alleged retaliation by the Warden/Center Supervisor, the inmate shall contact the appropriate Chief Deputy/Deputy/Assistant Director. Regardless, the inmate must exhaust their remedies through the grievance process.
2. Any reprisal or retaliation by staff is absolutely prohibited and will be dealt with in accordance with the appropriate policy regarding employee conduct and discipline. All personnel shall receive written and oral notice that formal and/or informal reprisals will not be tolerated.

The Training Academy has implemented a training program regarding inmate problem resolutions and complaints. The training is mandatory for all staff involved in the inmate grievance process.

3. Once an inmate initiates the grievance process, the process shall be followed through all stages without interference by administrators or employees of the division. Anytime an inmate voluntarily decides to withdraw a grievance, he or she must submit a Grievance Waiver Form (see Attachment IX). The appropriate staff will verify receipt of the waiver in writing.
4. If reprisal or retaliation is suspected or determined after the unit/center investigation, the grievance shall be forwarded to Internal Affairs for further review with all relevant documentation.

L. Records

1. Each designated administrator at each level of response shall collect and systematically maintain records regarding the filing and disposition of grievances. These records will be maintained pursuant to the Division's record retention policy in either hard copy or in a retrievable form, as well as in the inmate's electronic record, and shall be available for inspection as required by law.
2. At a minimum, such records shall include aggregate information regarding the numbers, types and disposition of grievances, as well as individual records of the dates and reasons for each disposition at the formal grievance (Step Two) and appeal stages of the procedure and shall be logged in the electronic offender records system. Such records shall be preserved in accordance with the policy regarding records retention.
3. Records regarding the participation of an individual in grievance proceedings shall not be available for review by any inmate other than the grievant.
4. Grievance records, including statements and testimony provided during the process, are confidential and are not available to inmates. Division personnel other than those directly involved in the grievance process may not have access to the information, unless the person's job requires access to such records.
5. Except as otherwise provided by Arkansas law, grievance records will not be available to non-departmental personnel other than those representing the Division of Correction or providing services such as imaging or destruction of records under an agreement with the Division of Correction.
6. No entries concerning grievances, or an inmate's participation in a grievance proceeding through testimony or submission of evidence, shall be recorded in the inmate's paper institutional file.
7. Only those positions authorized by the appropriate Chief Deputy/Deputy/Assistant Director will have access to the Grievance Tracking Program.

M. Evaluation

1. Monthly, quarterly and annual reports may be generated from the tracking system.
2. Records of staff efforts at problem solving may be considered by supervisors evaluating the performance of staff.

N. Prison Litigation Reform Act Notice

Inmates are hereby advised that they must exhaust their administrative remedies as to all defendants at all levels of the grievance procedure before filing a Section 1983 lawsuit or Claims Commission claim. If this is not done, the lawsuit or claim may be summarily dismissed.

Inmates must attach a copy of the Chief Deputy/Deputy/Assistant Director's response to any petition or complaint; otherwise, the court or commission may dismiss the case.

Inmates are also advised that they shall be subject to paying filing fees in Federal Court pursuant to the Prison Litigation Reform Act.

V. **REFERENCES:**

Prison Litigation Reform Act
Prison Rape Elimination Act

VI. **ATTACHMENTS:**

Attachment I – Unit Level Grievance (Informal Resolution/Formal Grievance/Emergency Grievance)
Attachment II – Acknowledgment of Unit Level Grievance
Attachment III – Warden/Center Supervisor's Decision/Inmate Appeal
Attachment IV – Health Services Response to Unit Level Grievance
Attachment V – Acknowledgment of Grievance Appeal/Rejection of Appeal
Attachment VI – Chief Deputy/Deputy/Assistant Director's Decision
Attachment VII – Grievance Codes
Attachment VIII – Inmate Grievance Investigation Worksheet
Attachment IX – Grievance Waiver
Attachment X – Grievance Extension

UNIT LEVEL GRIEVANCE FORM**Attachment I**

Unit/Center _____

Name _____

FOR OFFICE
USE ONLY

ADC# _____ Brks # _____ Job Assignment _____

_____ (Date) STEP ONE: Informal Resolution

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

If the issue was not resolved during Step One, state
why: __________ (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm; emergency grievances are not for ordinary problems that are not of a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why:

_____*Is this Grievance concerning Medical or Mental Health Services? _____ If yes, circle one: medical or mental*
BRIEFLY state your one complaint/concern and be specific as to the complaint, **date**, and place, name of personnel involved and how **you** were affected. (Please Print):

Inmate Signature _____

Date _____

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.**THIS SECTION TO BE FILLED OUT BY STAFF ONLY**This form was received on _____ (date), and determined to be **Step One** and/or an Emergency Grievance ____ (Yes or No). This form was forwarded to medical or mental health? (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____**PRINT STAFF NAME (PROBLEM SOLVER)** _____

ID Number _____

Staff Signature _____

Date Received _____

Describe action taken to resolve complaint, including **dates**:

_____**Print and Sign Staff Name & Date Returned** _____ **Inmate Signature & Date Received** _____This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? ____ (Yes or No).

Staff Who Received Step Two Grievance: _____ Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

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

Attachment II**ACKNOWLEDGE OR REJECTION OF UNIT LEVEL GRIEVANCE**

Date: _____

To: Inmate _____ ADC# _____

From: _____ Title: _____ Grievance # _____

Please be advised I have received your Grievance dated _____ on _____.

You should receive communication regarding the Grievance by _____ * OR

Your grievance was rejected as non-grievable, untimely, duplicative, frivolous, or vexatious.

CHECK ONE OF THE FOLLOWING

_____ This Grievance will be addressed by the Warden/Center Supervisor or designee.

_____ This Grievance is of a medical nature and has been forwarded to the Health Services Administrator who will respond.

_____ This Grievance involves a mental health issue and has been forwarded to the Mental Health Supervisor who will respond.

_____ This Grievance has been determined to be an emergency, as you so indicated.

Action Taken: _____

_____ This Grievance has been determined to not be an emergency because you would not be subject to a substantial risk of personal injury or other serious irreparable harm. Your Grievance will be processed as a non-emergency.

_____ This Grievance was REJECTED because it was either non-grievable (_____), untimely, a duplicate of _____, or was frivolous or vexatious.

B. INMATE'S APPEAL

If you disagree with a rejection, you may appeal this decision within five working days by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director. If you do not receive communication regarding your grievance by the date listed above, you may move to the next level of the process. To do so, indicate in the Inmate's Appeal Section below that you did not receive a response and mail it to the appropriate Chief Deputy/Deputy/Assistant Director within five working days *. Keep in mind that you are appealing the decision to reject the original complaint. Address only the rejection; do not list additional issues, which were not a part of your original grievance as they will not be addressed. Your appeal statement is limited to what you write in the space provided below.

Inmate Signature_____
ADC#_____
Date

If appealing a rejection, please include both the Unit Level Grievance Form (Attachment I) and the Rejection (Attachment II)

Attachment III

INMATE NAME _____ ADC# _____ GRIEVANCE # _____

WARDEN/CENTER SUPERVISOR'S DECISION

Signature of Warden/Supervisor or Designee

Title

Date

INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five working days as per policy by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director. Keep in mind that you are appealing the decision to the original complaint. Do not list additional issues, which are not a part of your original grievance, as they will not be addressed. Your appeal statement is limited to what you write in the space provided below above.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE?

Inmate Signature

ADC#

Date

If appealing, please submit both the Unit Level Grievance Form (Attachment I) and the Warden's Decision (Attachment III)

Attachment IV

Inmate Name: _____ **ADC#** _____ **Grievance #** _____

HEALTH SERVICES RESPONSE TO UNIT LEVEL GRIEVANCE

Signature of Health Services Administrator/Mental Health Supervisor or Designee & Title

Date

If follow up by Health Services Staff is required, are the details included in the response above?

Yes _____ **or, No follow up is necessary** _____

INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five working days as per policy by filling in the information requested below and mailing it to the Deputy Director for Health & Correctional Programs. Keep in mind that you are appealing the decision to the original grievance. Do not list additional issues, which were not a part of your original grievance, as new issues will not be addressed. Your appeal statement is limited to what you write in the space provided above the signature line.

WHY DO YOU DISAGREE WITH THE RESPONSE GIVEN ABOVE?

Inmate Signature

ADC#

Date

If appealing, please submit both the Unit Level Grievance Form (Attachment I) and the Health Services Response (Attachment IV)

Attachment V

Acknowledgment of Grievance Appeal, or Rejection of Appeal

TO: Inmate _____ ADC # _____

FROM: _____ TITLE: _____

RE: Receipt of Grievance Appeal # _____ DATE: _____

Please be advised your Appeal dated _____ was received in my office on _____

**The Chief Deputy/Deputy/Assistant Director will answer this appeal by _____,
OR,**

Your grievance appeal is being returned pursuant to the Administrative Directive on Inmate Grievances due to one of the following:

_____ **The time allowed for appeal has expired.**

_____ **The matter is non-grievable and does not involve retaliation.**

_____ **Request disciplinary action against employee, contractor, or volunteer**

_____ **Claim for monetary damage**

_____ **Parole and/or Release matter**

_____ **Transfer**

_____ **Job Assignment (Unrelated to Medical Restriction)**

_____ **Disciplinary matter**

_____ **Matter beyond the Division's control and/or matter of State/Federal law**

_____ **Involves an anticipated event**

_____ **Publication**

_____ **You did not send all the proper Attachments:**

_____ **Unit Level Grievance Form (Attachment I)**

_____ **Warden's/Center Supervisor's Decision (Attachment III); or Health Services
Response (Attachment IV for Health Issues Only)**

_____ **Acknowledgement and/or Rejection form (Attachment II)**

_____ **Step Two was appropriately rejected**

_____ **Did not give reason for appeal in space provided for appeal**

_____ **Did not complete Attachment III or IV by signing your name, ADC #, and/or the date**

_____ **Unsanitary form (s) or documents received**

_____ This Appeal was REJECTED because it was a duplicate of _____, or was
frivolous or vexatious.

Attachment VI

INMATE NAME _____ ADC# _____ GRIEVANCE # _____

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

SIGNATURE

DATE

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Chief Deputy/Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court may dismiss your case without notice. You may also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

GRIEVANCE PROCEDURE CODES**Attachment VII (Page 1)**

Each Unit/Center is assigned a unit code as follows:

BC	Boot Camp	MC	Mississippi County Work	PB	Pine Bluff Unit
BOW	Bowie County		Release	PBR	Pine Bluff Reentry Center
BU	Benton Unit	MCP	McPherson Unit	PBW	Pine Bluff Unit Work Release
CU	Cummins Unit	MCS	McPherson Special Needs Unit	TU	Tucker Unit
CMU	Cummins Modular Unit	MX	Maximum Security Unit	TX	Texarkana Regional
DR	Delta Regional Unit	NC	North Central Unit		Correctional Center
EA	East Arkansas – population	OR	Ouachita River Corr. Unit SAT	VU	Varner Unit – population
EAM	East Arkansas – Max Sec		Wrightsville Satellite Unit	VSM	Varner Super Max
ESU	Ester Unit	SNU	ORCU Special Needs Unit	WR	Wrightsville Unit
GR	Grimes Unit	SNN	ORCU New Commitment	WHM	Wrightsville Hawkins Males
RLW	Randall L. Williams Facility	SNH	ORCU Hospital		
HA	Hawkins Unit	NW	Northwest AR Work Release		

Which is succeeded by the last two digits of the calendar year, followed by a five digit sequential number beginning with 00001 (i.e., CU-03-00001).

GRIEVANCE TYPE CODES

100	Transfer	500	Institution Operations
101	Unit Transfer	501	Food/Food Services
102	Interstate Compact	502	Commissary
200	Institutional Assignment	503	Inmate Funds
201	Cell Barracks	504	Sanitation – Showers, etc.
202	Job	505	Inmate Property Claims
203	Classification	506	Clothing – Bedding/Footwear
204	Enemy Alert List	507	Activity Rotation
205	Protective Custody	508	Living Conditions
206	Punitive	509	Working Conditions
207	Administrative Segregation	510	Grooming
208	School/Vocation Training	511	Recreation
209	Rehabilitation Programs	512	Searches
210	Counselors	513	Contraband/Confiscation Forms
211	Investigative Status – DCR	514	Alternative Meals
212	48 Hour Relief Privileges	515	Hunger Strike
300	Communication	516	Diet
301	Visits (non-legal)	600	Medical
302	Telephone	601	Denial of Treatment
303	Radio/Television/Movie	602	Harassment or Abuse
304	Interview Request	603	Records
305	Unit Policy/ADC Policy	604	Footwear/Orthotics
306	Publication	605	Sick Call – not otherwise specified
307	Mail	606	Vision
308	Marriage	607	Food/Special Diet
400	Disciplinary Matters	608	Medication/Pill Call – not otherwise Specified

GRIEVANCE TYPE CODES**Attachment VII (Page 2)**

609	Medical Classification	707	Retaliation/Harassment – Use of the Grievance Process
610	Hearing	708	Retaliation/Harassment – Access to Courts Rights
611	Housing conditions (medical reasons)	709	Notary Services
612	Chronic Care	710	Access to Grievance Forms
613	Chronic Care not seen	711	Storage of Legal Materials
614	Chronic Care rx's not prescribed	712	Legal Mail
615	delete	713	No Response to Grievance
615	Orthopedic	714	Other Legal Matters
616	Sick Call no security escort	715	No Further Action is Necessary(NFAN)
617	Sick Call not seen timely	716	Freedom of Information Act (FOIA)
618	Sick Call referred not seen	717	Multiple Issues Grieved
619	Other	718	Welfare
620	Dental	719	Copies Made
621	Dental Prosthetics	720	Retaliation – other
622	Medical Appointments (outside not otherwise specified)	721	Loss of Property
623	Surgery		
630	Mental Health	800	Complaints Against Staff
631	Mental Health Appointments	801	Physical Abuse
632	Mental Health – Medication side effects	802	Verbal Abuse
633	Mental Health – Housing	803	Other Complaints Against Staff
640	Medication not given	900	Other
641	Medication prescribed	901	Good Time
642	OPM medications	902	Furlough
643	Medication not ordered	903	Other Complaints Against Inmates/Cellmate
644	Medication error	904	Time Computation
645	Medication pharmacy error	905	Hobby Craft
650	Co-pay	906	Religion
651	Lab	907	Parole Matters
652	X-ray	908	Discrimination (Race, Religion, Sex, etc).
653	Treatment call	909	Name Change
654	Informal resolution not answered	910	Urine Testing
655	Consults	911	Work Release
700	Legal	912	Maintenance
701	Access to courts	913	Grieving for Another Inmate
702	Indigent Inmate Supplies	914	Detainer Removed
703	Law Books/Pages	915	PREA
704	Law Library		
705	Legal Visits with Inmate		
706	Other Legal Visits		

Attachment VIII

The below listed inmate has filed a grievance/appeal with this office. Please give a detailed statement in regards to the issue(s) stated by the inmate in this grievance. The statement, "I have no knowledge," is not acceptable. Also, please submit any supporting documentation with your response, (i.e., disciplinary, 005's, logs, medical information, other officer and/or inmate statements, etc.).

EMPLOYEE: _____ **UNIT:** _____

RE: INMATE: _____ **ADC#** _____

FROM: _____ **DUE DATE:** _____

GRIEVANCE #: _____ **DATE & TIME OF INCIDENT** _____

Inmate's Complaint:

STATEMENT: _____

Responding Staff Signature

Date

You are not to retaliate against this inmate in any shape, form or fashion for submitting this grievance. If you are found to have retaliated against any inmate for using the grievance procedure, you will be subject to disciplinary action, which may be a verbal warning, a written warning, and/or termination.

810-5

Attachment IX

GRIEVANCE WAIVER

TO: _____ DATE: _____

FROM: _____ SUBJECT: _____

I, _____, ADC# _____, do hereby agree that grievance number _____, dated _____, has been resolved/and/or, I no longer want to pursue this matter. This decision is voluntary and made without threats or coercion of any type.

Inmate Signature

Date

Witness Signature

Date

810-6

Attachment X

GRIEVANCE EXTENSION

TO: Inmate _____ ADC# _____

FROM: _____ TITLE: _____

DATE: _____ GRIEVANCE # _____

ADDITIONAL TIME IS NECESSARY IN ORDER TO:

The Chief Deputy/Deputy/Assistant Director will answer this appeal by _____:

This extension is automatic unless you specifically disagree; if you agree to the extension then no action is required on your part. If you DO NOT agree to an extension, check DISAGREE, complete the signature line and return the original to this office. If you do not agree, you understand that, with your decision, NO FURTHER ACTION will be taken on this issue, you WILL NOT have exhausted your administrative remedies, and your grievance will be returned to you without a decision regarding its merit.

_____ DISAGREE

By disagreeing with this extension, I waive my right to have this grievance issue considered.

_____ ADC# _____ DATE: _____
Inmate Signature

_____ DATE: _____
Warden/Center Supervisor Signature

_____ DATE: _____
Chief Deputy/Deputy/Assistant Director/Director Signature